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THE NORTH CAROLINA STATE BAR

FALL
2010

JOURNAL



The
Lawyer Assistance Program
Symposium



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Work and Well-Being *page 12*

Suicide in the Legal Profession *page 18*



DEPRESSION, STRESS, CAREER ISSUES, AND ADDICTIONS. BELIEVE IT OR NOT, THIS IS AN UPLIFTING STORY.

Actually, there are many stories. Every one of them about someone in the legal field.

Lawyers are as vulnerable to personal and professional problems as anyone else.

Competition, constant stress, long hours, and high expectations can wear down even the most competent and energetic lawyer. This can lead to depression, stress, career problems, relationship issues, financial problems, or alcohol and substance abuse.

So where's the uplifting part? That's where we come in.

The Lawyer Assistance Program was created by lawyers for lawyers. While we started as a way for attorneys to deal with alcohol related problems, we now address any personal issue confronted by those in the legal profession.

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confidential and is received by a professional staff person. You can be confident that you're talking to the right person and that no one will know about it.

We understand what it's like to face personal problems within the profession, because we only help lawyers.

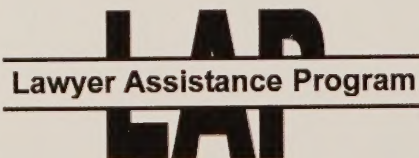
Our service is not only confidential, it's free, paid for with your yearly bar fees.

If you have a personal issue, or know someone who does, we can be the crucial first step in turning things around, a role we've played for many of your peers.

We have countless success stories we could tell, and yes, they are uplifting. But we do our work quietly, confidentially, and professionally so the stories will stay with us.

We're here for you. Visit www.nclap.org, call 1-800-720-7257 or email nclap.org.

We can help if you get in touch with us.



FOR THE ISSUES OF LIFE IN LAW

THE
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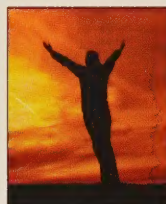
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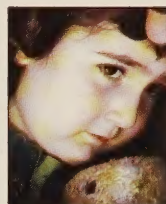
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Help is a Confidential Phone Call Away...

BY BARBARA B. WEYHER

"In the depths of winter, I finally learned there was in me an invincible summer."

—Albert Camus

During the past 30 years, well over 1,000 North Carolina lawyers have been helped through their personal depths of winter with the support of the North Carolina State Bar's Lawyer Assistance Program (LAP). For some, these depths have been caused by alcohol or chem-

ical addictions and for others by depression or other mental illnesses.

Today, NC LAP is widely recognized as one of the best lawyer assistance programs in the United States, with success rates of 86% (addiction) and 83% (mental illness). We are proud to dedicate this issue of the *Journal* to the Lawyer Assistance Program.

Throughout this edition of the *Journal* you will find detailed information on LAP and its history as well as inspiring narratives of personal recovery. I think it is only fitting that I use my final president's column to tell you a bit about some of the remarkable people who are responsible for the success of this outstanding program.

LAP is a *confidential* peer-support program with services including assessments, consultations, referrals, interventions, education, advocacy, monitoring, and recovery support. It is governed by a nine-member board, currently chaired by State Bar Councilor Mark Merritt. The board consists of three Bar councilors, three addiction or

mental health professionals, and three lawyer volunteers.

Peer support is provided by over 230 lawyer volunteers throughout the state, who generally have personal experience with addiction or mental health issues and who are currently in recovery. Volunteers are divided into two separate committees: FRIENDS, which provides peer assistance in the areas of depression and mental health, and PALS, which is focused on addiction. The volunteers support those suffering from similar condi-

tions by sharing their own experiences and successes. They also serve as monitors and mentors to those who are new to recovery. All volunteers receive training in peer assistance, including specific training in confidentiality.

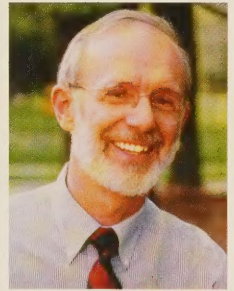
LAP is ably directed and managed by three professionals: LAP Director Don Carroll, who has responsibility for the western counties of North Carolina, Assistant Director Ed Ward, who primarily serves the

eastern part of the state, and LAP Coordinator Towanda Garner, who serves the Piedmont. Some short bios as well as contact information follow:

Don Carroll – LAP Director

Western North
Carolina District
1-800-720-7257
ncdap@bellsouth.net

Don Carroll has served as director of LAP since 1994. He is a 1967 gradu-



ate of Davidson College and a 1971 honors graduate of the University of Virginia Law School. He has a Masters of Philosophy degree from the University of Dundee in Scotland and an MFA degree in writing from Vermont College. Don also holds certifications as an Employee Assistance Professional and as an Executive Coach.

Following law school, Don clerked for the Honorable James McMillan, United States District Court Judge for the Western District of North Carolina. Upon completing his clerkship, he entered private practice with the firm of Helms, Mullis & Johnston and was a partner in its successor firm, Smith, Helms, Mullis & Moore.

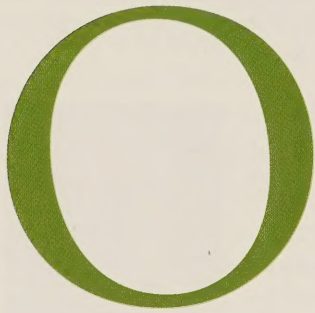
As the LAP director, Don not only administers the program, but he also works directly with impaired lawyers, from assessment through recovery. He teaches at Campbell University School of Law on addiction and the law, and writes regular LAP columns for the *State Bar Journal* and the *Campbell Law Observer*. In 2001, he was appointed by the president of the ABA to serve on its Commission on Lawyers Assistance Programs. In 2000 he received the Addiction Professionals of North Carolina Outstanding Achievement Award

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A Hard Look in the Mirror

BY MARK MERRITT



ne of the great benefits of serving
on the Board of Directors of the
Lawyers Assistance Program
("LAP") has been to meet many of

our volunteers. Most of our volunteers are lawyers who are in recovery



and who have worked hard to overcome alcoholism, drug addiction, or mental illness. They give back generously to assist those who are currently battling those diseases and who can benefit tremendously from their similar experiences and help. The LAP is now celebrating 30 years of service. I honor what the LAP volunteers do, and it is a real privilege for me to have them as friends.

The characteristic that I admire most about people in recovery is a trait we desperately need now in the State Bar. That trait is brutal honesty. When you are around a recovering alcoholic or drug addict, you are struck by their brutal honesty about their disease, how it took over their life, and how it hurt them and the people that they love. You realize that the first step to real recovery is to acknowledge and name the problem.

The State Bar is very much in the position of the alcoholic or drug addict that needs to admit that there is a problem that has to be addressed. We have been aware for some time that national surveys show that lawyers are among the least healthy group of people and struggle with drug and alcohol abuse, anxiety, depression, and other mental illnesses. From the LAP itself and from Bar leaders around the state, we continue to hear

how the turbulent economic times we all face have devastated lawyers who have lost jobs, lost clients, and lost their nest eggs in the economic downturn. Many new law school graduates have no job prospects but are saddled with debt. The result is that lawyers in North Carolina may be at the highest risk they have ever been for substance abuse or mental illness.

The anecdotal evidence in this regard is fully supported by the recent survey of North Carolina lawyers by Dr. Darcy Siebert of Rutgers University. Dr. Siebert, an associate professor at the Rutgers School of Social Work, conducted an anonymous survey of North Carolina lawyers to gain a better understanding of their state of mental health. Her results, which are discussed at length in a separate article, confirm that we face serious challenges to improve the well being of lawyers. Over 60% of lawyers

find their jobs stressful, 39% of lawyers scored at or above the cutoff score for burnout, and only 53% scored above neutral in professional life satisfaction. When asked if they would advise their children to become lawyers, 41.9% indicated that they would not. The survey found that 10.3% of respondents scored at or above the cutoff for depression, that 12.4% take a prescription for stress or anxiety and that 11.4% are taking a prescription for depression. Drinking among lawyers at levels that are considered unhealthy is extensive among the attorneys surveyed.

The good news from the survey was that 97.4% of lawyers knew about the LAP and that 70.2% felt confident or very confident that they would refer colleagues to the LAP. Sadly, only 36.8% of lawyers felt confident or very confident that they would use the LAP for their own personal issues. Perhaps

"Medical research has shown that substance abuse and mental illness are not the result of flawed character or low morals, but stem from differences in the way that the brains of people can handle substances and deal with the stressors that life imposes upon us."

the most troubling statistic of all is that 48.4% of lawyers agreed or strongly agreed that they would have difficulty asking for help with substance abuse or issues that affected their mental health.

These statistics show the challenge that we face: lawyers suffer significant substance abuse and mental health issues but are very reluctant to seek help for themselves. This shows that the stigma around issues of substance abuse and mental illness remains and prevents a highly educated group of professionals from receiving the help they need to lead happier and more fulfilling lives. Medical research has shown that substance abuse and mental illness are not the result of flawed character or low morals, but stem from differences in the way that the brains of people can handle substances and deal with the stressors that life imposes upon us. Despite that body of knowledge, lawyers still feel constrained from acknowledging their personal struggles with substance abuse or mental illness out of fear that it will harm their professional reputation or cause them to lose their law license. Ironically, and sadly, it is often the delay in addressing these conditions that can lead lawyers to become so dysfunctional and unable to make appropriate choices that they engage in conduct that results in some kind of discipline from the State Bar.

It is always easier to identify problems than to have a plan to solve them. I would suggest that we begin with the same kind of honesty that our friends in recovery have and ask ourselves some hard questions.

■ Are we honest with ourselves about our own health and happiness? Do we allow ourselves the time we need for sleep, exercise, and social interaction that are the cornerstones of our mental and physical well-being?

■ Are we honest when we see our colleagues who may be struggling with substance abuse or mental illness? Do we really act to help them get well or are we too quick to judge, stigmatize, and marginalize them or simply too busy to help?

■ Are we honest in identifying and placing some limits on the stressors in our professional lives? Has our inability to set boundaries in our professional lives turned law into a 24-hour, seven-day-a-week job where our clients feel it is their right to call on the cell phone at any hour or ask for the immediate response to their email on your PDA?

■ Are we honest enough to admit that the pursuit of material wealth and billable hours has disconnected us from helping others in a way that might actually make us more connected, less isolated, and happier?

The good news is that there is work at the national and state levels to address these issues. Some recent studies strongly support that the substance abuse and mental health problems that lawyers face start in law school, and the ABA is doing good work with law schools to address this problem and to remediate the characteristics of law school that can make it destructive of the well-being of lawyers. In our state, the LAP has an experienced staff and a committed and well-trained group of volunteers who are available to assist lawyers anywhere and anytime to address the challenges that they face from substance abuse or any form of mental illness. Our State Bar has a history of working with lawyers who suffer with some form of impairment and who have taken the steps that they need to help themselves.

The LAP Board's hope is that Dr. Siebert's work will promote the kind of dialogue we need to address these problems knowledgeably and constructively. We know that we have work to do educating lawyers about the prevalence and effect of substance abuse and mental illness and reducing the stigma associated with those conditions. After 30 years of service, now is a great time to take stock of where we are and what we can do better. Our hope is that this issue of the *Journal* will help every lawyer take a hard look in the mirror at his or her own life and well-being. That has been an essential step for our colleagues who are now in recovery, and I am certain that each of them would tell you that he or she is better for it. The articles in this symposium

issue are designed to help us take this hard, honest look.

This symposium issue starts with a history of the evolution of the Lawyer Assistance Program in North Carolina. One of the remarkable things about this story is how organic that evolution has been. Over time, the LAP as a program has grown and adapted to help better address the issues that lawyers have which may lead to professional impairment.

After that historical look, we then move to where we are presently. We have a vivid snapshot of our well-being from the recent survey of the profession conducted by Professor Siebert. Her article looks at the state of well-being of lawyers in North Carolina today. The insights that her research provides are one of the dramatic and important reasons for this symposium issue, and it helps to provide that hard look in the mirror about the health of our profession.

Oftentimes, there is a huge risk for a lawyer who needs help and does not find treatment. The risk is suicide. Professor Barbara Scarboro, a faculty member at Appalachian State University and a member of the LAP Board, and Towanda Gardner, LAP staff member, have contributed an article about suicide in the legal profession. Any hard-nosed look at the health of our profession requires us to talk openly and directly about the risk of suicide.

One of the things that brings greatest hope to those who suffer from depression and other mental illnesses, or addiction, is to be able to hear the stories of others who have gotten help and seen dramatic changes in their lives. Included in this symposium issue are two powerful recovery stories. These stories are powerful examples of how illnesses can be treated successfully and lawyers can return to lives that are happy and productive. These stories are what the LAP is truly all about, but we cannot do it without your help. ■

Mark Merritt is chair of the Lawyer Assistance Program Board.

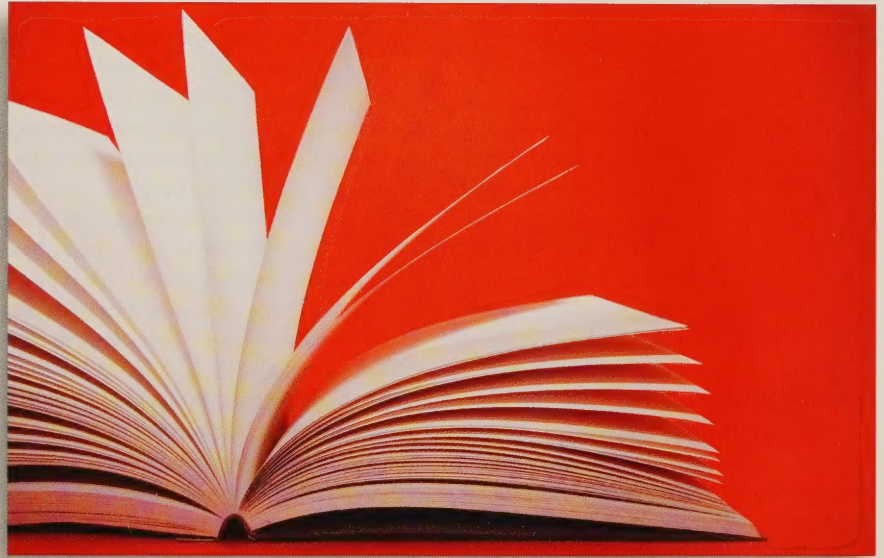
The Lawyer Assistance Program Story

BY JERRY LEONARD AND DON CARROLL

As we enter a new decade, we know more. Everything moves at a faster pace and there are more of us: people, clients, and lawyers. We are tethered to cellular phones, e-mail, computers, and software programs. None of this was true 30 years ago, but some things haven't changed. Then and now approximately 10% of the population who drink, or use other mind-altering substances, becomes alcoholic or addicted. The recent survey of lawyers in North Carolina (see Work and Well-Being on page 12) found 34.7% of male lawyers and 29.2% of female lawyers at risk for alcohol issues, according to the National Institute of Health's science-based protocol. But while the risk of problems from addiction and depression may be as high as ever for North Carolina lawyers, the survey found that almost 8% of the lawyers in North Carolina self-reported being in recovery from past alcohol or drug abuse. That this large segment of the Bar is healthy and contributing to the profession is, in no small part, a tribute to success of the Lawyer Assistance Program in meeting the needs of lawyers and judges in our state. How did this start and what happened?

In 1977, the Disciplinary Hearing Commission of the North Carolina State Bar discovered that, since its creation two years earlier, two-thirds of all cases that came before the commission involved alcohol or drug abuse. Aware of the problem of addiction and its adverse impact on the practice of law and the public, the State Bar Council appointed a standing committee to deal with impaired lawyers.

As approved by the North Carolina Supreme Court in August 1979, the Positive Action for Lawyers (PALS) Committee was established to implement a program of intervention for lawyers with substance abuse problems affecting their professional conduct.



The hallmark of PALS was confidentiality, recognizing that without the trust of lawyers, PALS would fail. PALS was set up separate and distinct from the Grievance Committee and disciplinary office of the State Bar.

At first, PALS didn't receive many referrals. The PALS Committee, formed with the hope of helping the impaired attorney recover from alcoholism, had to earn its stripes. The impaired lawyer, as well as anyone else involved, needed to have absolute confidence that conversations and names would remain confidential.

The first chairperson of PALS, John W. Campbell, was appointed in 1979 and the first director was Lester Chalmers, who served from 1983 until his death.

The first formal meeting of PALS volunteers was held in Pinehurst in February 1985. At that time, PALS had a membership of 28 volunteers—today there are over 200 LAP volunteers.

During the 1980s the PALS Program con-

tinued to grow. Its impact among those who suffer from alcoholism or other chemical addiction, and their families, partners, associates, and friends, was dramatic and often life-saving. In 1988, things began to take off. PALS probably received more calls that year than in the preceding four years combined, PALS' membership grew dramatically, and procedures for intervention were established.

In 1989, the State Bar's rules relating to PALS were amended to put some teeth into the PALS Program when dealing with impaired lawyers who do not voluntarily agree to a program of recovery. In extreme cases a procedure was provided to allow PALS to petition a Superior Court Judge to suspend an impaired lawyer's license to practice law in North Carolina or to transfer the lawyer to inactive status for up to 180 days. The record of such proceedings are sealed and not open to the public. (Fortunately, the procedure is not frequently utilized.) PALS members were given immunity by being deemed agents of

the North Carolina State Bar if working within the procedural guidelines of PALS.

In November 1990, a PALS subcommittee, composed of several PALS members who were also judges, was appointed. This subcommittee was asked to establish an appropriate program for dealing with alcohol and drug problems among the members of the judiciary. A judicial subcommittee was added to PALS by rule change in December 1993. In 1994 the first judicial subcommittee of PALS was appointed.

It came to the attention of the PALS Committee that many impaired lawyers did not have funds or insurance to obtain treatment for chemical addiction. In 1992 the IOLTA Board approved a PALS funding application and granted funds to set up a revolving loan fund that is administered by the State Bar's executive director. This fund continues to this day to provide assistance to lawyers without recourse to get treatment.

PALS, in consultation with other committees and agencies of the Bar, recommended that information received by the State Bar concerning illicit drug use by a member of the Bar should not be treated as a grievance, but rather

referred to the PALS committee. If upon investigation it is determined by PALS that the information is credible, PALS contacts the lawyer and offers amnesty from discipline by the Bar with respect to the prior drug use on condition that the lawyer successfully completed a prescribed course of treatment and comply with follow-up monitoring and drug testing. However, if the lawyer does not cooperate with PALS or fails to complete the recovery program, PALS is obligated to respond back to the Grievance Committee when it makes such a referral. This amnesty program became effective December 5, 1991.

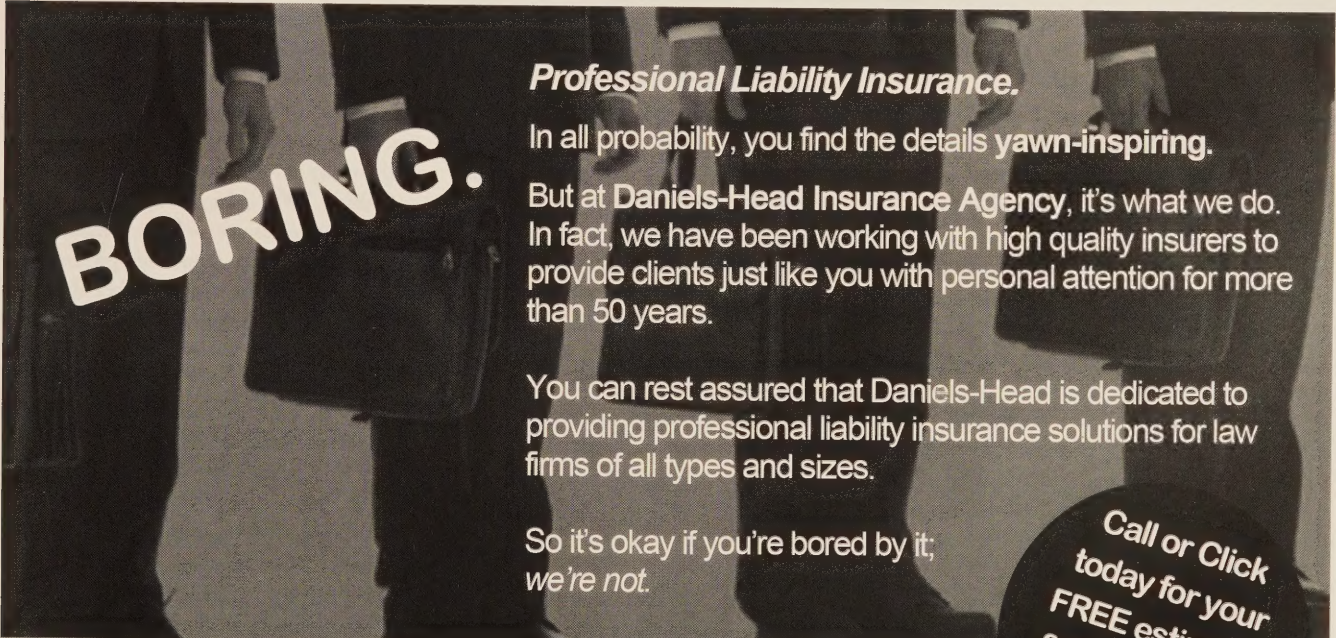
Although confidentiality has been basic to the PALS Program since its beginning, illicit drugs required some clarification of the confidentiality rules. The State Bar Council approved a rule change in 1993 which provides that communications between a PALS volunteer and an impaired lawyer are confidential to the same extent as communication between a lawyer and a client.

A growing concern among law school administrators emerged regarding problems of alcoholism and other drug use among law students. A law school substance abuse educa-

tional program became a part of the outreach of the PALS Program in 1990. Speakers from LAP appear on a regular basis at North Carolina law schools.

In the fall of 1993, PALS Chair Ernie Machen and volunteer director Eddie Murrelle convinced the State Bar Council that the PALS Program needed a full-time director. The job of part-time volunteer director had become a full-time endeavor. W. Donald Carroll Jr. was hired as the first director. Don was a practicing North Carolina attorney who has extensive experience and education in counseling and substance abuse. Don continues to serve as director of the LAP.

The Lawyer Assistance Program celebrated its 20th anniversary in 1999, which was also a formative year in its growth and expansion. Under the direction of then State Bar President Bob Sink, the mission of the Lawyer Assistance Program was expanded to include helping lawyers with depression and other mental health issues, in addition to its traditional role of helping lawyers suffering from addictive diseases. This change was timely as survey data increasingly showed the need to help lawyers with



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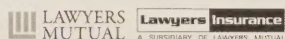
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other conditions besides addiction.

The central issue that the LAP Board faced at that time was whether or not to structure these outreaches administratively separately or together. Many individuals suffering from addiction also had symptoms of depression, and that often a person who identified as having a depression problem had, in the background, an unrecognized addiction issue. With insight, the program was organized in a unified administrative fashion so that all lawyers seeking help would be evaluated in the same way with equal attention directed to helping the lawyer recognize and discover the nature of his problem regardless of whether the core issue was addiction or mental health. The Board did maintain two different committees of volunteers. The first committee continued the old committee of PALS volunteers who were focused on helping lawyers dealing with addiction issues. A second new committee of volunteers was created called the FRIENDS Committee, which consists of lawyers who have dealt with depression and other mental health issues and whose mission is to provide peer assistance to lawyers seeking assistance for these problems.

Don Carroll continued as director of the LAP. Ed Ward was hired as assistant director of the LAP and director of the mental health expansion. Ed has an extensive background as an addictions professional and wide experience with depression and related mental health issues. He served for over eight years as executive director of Fellowship Hall, a facility in Greensboro for treatment of substance abuse and related mental health problems. In February 2000 there were eight FRIENDS volunteers with eight more awaiting appointment. Ten years later there are nearly 100 FRIENDS volunteers.

The FRIENDS volunteer support groups address the problems of isolation in lawyers suffering from mental illnesses. Ed has found during the past ten years that the use of trained volunteers and volunteer groups leads to the growth of trust in the confidentiality of the LAP, which has resulted in the number of lawyers accessing the LAP growing from a low of less than 5% self-referrals to almost 50% self-referrals.

The LAP Board determined at its January 21, 2000, meeting that lawyers involved in methadone maintenance would be allowed to

participate in the Lawyer Assistance Program, but there would have to be a goal of getting off methadone at some point that was medically appropriate. It was the Board's view that it was inappropriate for the Lawyer Assistance Program to continue working with lawyers indefinitely who remained in medically prescribed active addiction.

At the April 2000 LAP Board meeting, participation in a cross-professional survey with the doctors, pharmacists, nurses, and dentists was discussed. The survey was administered under the umbrella of the Consortium of Professional Recovery Programs in North Carolina that was started a few years earlier by Dr. Vanderbury, the director of the Physicians Professional Health Program. Elsewhere in this issue is an article describing the initial results of the survey which was completed in 2009 (see page 12).

During 2003 and 2004 the LAP Board spent time focusing on ways to assist Bar Councilors in doing their job. At this particular time the Bar Council was considering procedures for councilors who had lawyers in their district who would not respond to letters from the Bar. Often these Bar inquiries concerned very minor matters. As a result of this discussion the Board had staff prepare a *Guide for New Bar Councilors on Impairment in the Legal Profession*. This turned out to be a very comprehensive discussion of ways that any Bar leader could utilize the LAP program to help lawyers who might need assistance.

During 2004, Mary Howerton, the former executive director of the Mecklenburg Bar and a LAP Board member, presented to the LAP Board the results of her doctoral research. Her thesis was entitled *The Relationship of Attribution Style, Work Addiction Perceived Stress, and Alcohol Abuse in Lawyers in North Carolina*. Mary's research showed that, in comparison to earlier studies, the rate of depression among lawyers had increased significantly. Mary noted that the data showed an increase in the level of dissatisfaction with the practice of law among younger lawyers, particularly those in practice for less than five years. At this time the Board was discussing the possibility of adding a third clinical position on the LAP staff and it was agreed that this position, in addition to regular clinical duties, would be utilized to focus on helping younger lawyers and in outreach to law schools. Towanda Garner was hired

CONTINUED ON PAGE 24

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Work and Well-Being

BY DARCY CLAY SIEBERT

Close to ten years ago, the members of the Consortium for Professional Recovery Programs began discussing a collaborative project to survey

North Carolina professionals. This consortium, comprised of representatives from medicine, law, dentistry, pharmacy, psychology,

nursing, and social work, met regularly to discuss methods to improve the behavioral health issues experienced by their professionals. The consortium members believed that both services and policy could be improved if they had current data about the behavioral health and occupational issues facing their memberships.

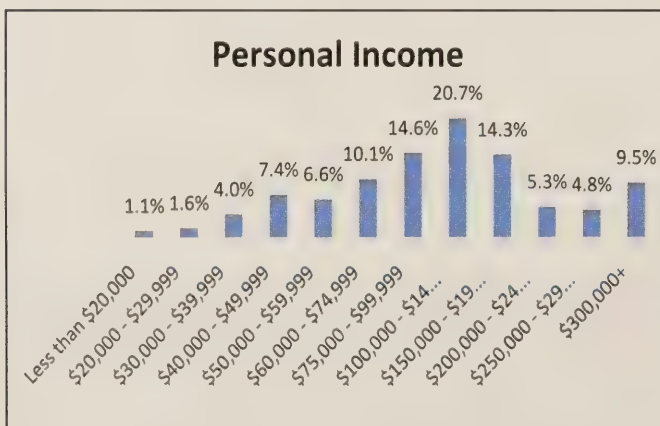


opment of Work and Well-Being: A Survey of North Carolina Professionals. Through the tireless efforts of consortium members, the project was refined through an iterative process, ensuring the scientific validity and the professional relevance of the findings. The results of this project, ultimately funded and implemented last year, are summarized herein.

We mailed questionnaires to a probability sample of members of the North Carolina State Bar, and we received 390 usable responses. The questionnaire was lengthy, and it included occupational items about workplace and workload, behavioral health questions about alcohol and other drug use, depression, and burnout, along with demographic items. The survey was anonymous; that is, the identity of the respondents could not be connected to the information they provided. As a result, most respondents answered all the items, and many provided written comments as well.

The demographics of the respondents were well distributed. Lawyers' ages ranged between 27 and 90, and the average respondent was 50 years old. Most were married (80.5%), white (91.7%), male (61.1%), and straight (97.4%), and the mean household income was between

Over the next several years, the consortium members worked together to develop a comprehensive set of issues that were relevant to all the professions, along with issues that were idiosyncratic to each discipline. The results of this effort provided the foundation for the devel-



\$100,000 and \$150,000 per year.

More than 20 different areas of practice were represented, but a large number of respondents practiced in real estate law (12.7%), criminal law (11.9%), family law (11.4%), and general practice law (9.0%). Other areas of practice included business litigation (6.1%), corporate law (6.1%), trusts and estates (4.8%), plaintiff's personal injury (4.5%), and a variety of additional practice specializations. Although the majority were in solo practices (28.9%), many practiced in small firms of two to four lawyers (24.0%) or four to eight lawyers (12.0%), and others practiced in firms of 20-50 lawyers (16.9%) and firms of over 50 lawyers (18.3%). Respondents' clients were largely city-dwellers (58.0%), and most respondents practiced in private firms (72.5%). Respondents had, on average, 22 years of professional experience. The NC State Bar does not collect demographic information about its members, so we have no way of knowing whether this sample adequately represents the population of lawyers in North Carolina. However, the sample resembles the membership of the American Bar Association in terms of mean age (48), gender (67.1% men), and race (88.7% white). The wide range of demographics in our sample gives us some confidence that no one group is dramatically over-represented.

The lawyers in this sample work very hard. Weekly billable hours reported ranged from 0 to 75, with a mean of 29.5 hours. Average number of hours worked per week ranged from 0 to 80, and although 47% reported no on-call responsibilities, 25% reported being on call 20 out of the previous 30 days. In addition, 42% reported taking work home frequently or daily, and 79% reported taking only 15 or fewer days of vacation in the previous year. Although the average number of vacation days reported was 12.8 in the previous year, 5% took no vacation days at all. Despite all the hard work, 67% of respondents were somewhat or extremely worried about their future income because of changes in the profession, and they provided these responses before experiencing the full impact of the current recession.

The lawyers in this sample also faced a number of challenges in the workplace. For example, one quarter of respondents either agreed or strongly agreed that they faced pressure to compromise on professional ethical issues, and another 13% reported a

"neutral" response.

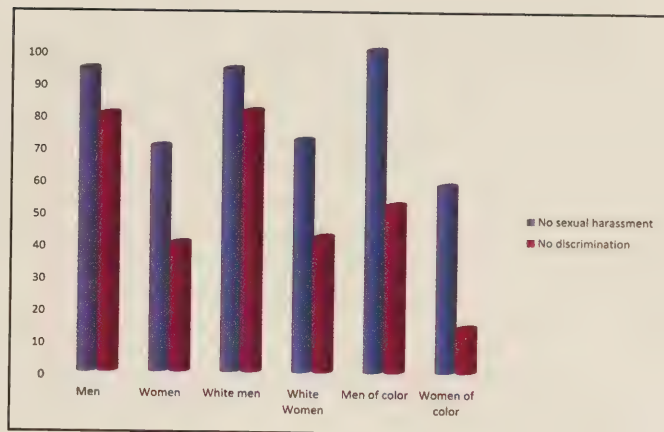
Most respondents (74.5%) reported having the material resources that they needed to do their jobs. However, 64.5% believed that they had enough support from co-workers, 36.7% reported having sufficient supportive supervision, and another 31% reported having no supervision. This is important, because material and social kinds of support tend to be mitigating factors for occupational stress. Without a doubt, lawyers in this sample were feeling occupational stress—38% agreed and 24.6% strongly agreed that their workplace was stressful, while only 15.6% disagreed or strongly disagreed that they worked in a stressful environment. A number of respondents also wrote about the stressful nature of their work, as represented by the following comments:

"In my view, a litigator's life is designed to be stressful. Clients are upset about being in a lawsuit. Opposing counsel are (sic) usually stubborn for no reason. And courts are looking for every reason to sanction lawyers for missteps. The key to lawyer well-being is working at a firm or other workplace where a balanced life is valued more than profits. Good luck finding that."

"Attorneys have a tremendous amount of pressure—some external and some internal. We are expected to hear and see things that the rest of society doesn't want to know about—especially in the criminal law setting. Many people get into the profession thinking that it automatically brings a six-figure salary—it is becoming more of a job than a profession, which is sad..."

"They never told me in law school how hard it would be to balance work, family, and God. I am sort of getting there, but find that most of these life issues are taboo, something my fellow lawyers do not want to talk about."

With regard to the experience of sexual harassment and discrimination in the legal profession, it is advantageous to be a man, and to be a white man in particular. Men experience lower levels of harassment and discrimination. All women experience higher rates of both, but women of color are partic-



ularly disadvantaged.

It is not surprising, then, that 39% of this sample of lawyers scored at or above the cut-off score for burnout and only 53% scored above "neutral" in professional life satisfaction; 6% of the total sample scored quite high, but 17% reported very low professional life satisfaction. Similarly, the average score on commitment to the lawyer role was only slightly more than "neutral."

In addition to limited professional satisfaction and commitment to the lawyer role, respondents also appeared to be experiencing some depression as well. As measured by the Center for Epidemiological Studies Depression Scale, 10.3% of the respondents scored at or higher than the cutoff for depression. Respondents also entered the profession with a history of behavioral health issues. For example, 20% reported alcohol or other drug abuse by a biological parent, 17% had an emotionally or psychiatrically troubled parent or caregiver, 16% reported being emotionally abused, 5.4% were physically abused, and 3.3% were sexually abused. Growing up in a troubled family certainly can place people at risk for their own behavioral health problems, so these statistics are cause for concern. It is not surprising, then, that 16% of lawyers reported their current mental health as fair or poor, that 12.4% reported taking a prescription for stress or anxiety, and that 11.4% reported taking a prescription for depression.

Not all lawyers in the sample handled their anxiety or depression with prescription medication. Instead, 44% reported relieving their depression or anxiety by drinking or using drugs in a way not prescribed by a physician, with 4.4% of these drinking or using drugs for relief either often or daily, and another 11% doing so "sometimes." Several respondents commented on this.

“...over the last number of years I have had a tendency to drink too much, but I find that it is more of a habit to relieve stress than a chemical dependency.”

“...I can see how the sorry state of our profession exacerbates stress, depression, and a general lack of satisfaction with one’s career choice. And for persons with a tendency to drink and/or do drugs, it is quite easy to understand how this profession could escalate their consumption.”

“Getting out of the law firm grind and into solo practice was one of the best actions I’ve taken for quality of life, but I was nine years in AA before having the courage to make the move.”

Drinking among lawyers was extensive, as demonstrated by the 72.5% of respondents who reported drinking at least weekly. Lawyers, like other professionals, tend to under-report the amount that they drink, as they want to give a good impression of themselves, even in an anonymous survey. Despite this tendency to answer in a socially desirable manner, 25.4% reported drinking five times a week or more, and 13% of the entire sample reported drinking daily. In addition, 53.2% drank until “high” one or more times in the last 30 days, 19.8% drank until high once a week or more, and 8.6% drank until high three or more times per week.

High-risk or “binge” drinking is a serious issue, as this pattern of drinking places the drinker at high risk for serious, adverse consequences like traffic accidents and health problems. Defined by the National Institutes of Health (NIH) as drinking five or more drinks at one sitting for men, 8.3% of men reported binge drinking once a week or more, and 34.7% of male respondents reported binge drinking once during the previous month.

The statistics for women were even more troubling. The NIH definition of binge drinking for women is drinking four or more drinks at one sitting, and although 29.2% of women reported binge drinking at least once during the last month, 9.1% of female lawyers in the sample reported binge drinking once a week or more.

Historically, drinking has often been a part of the legal profession—while having a meal with prospective clients, for example. Although only 7.3% of respondents believed that their firm encouraged drinking, 28.5% believed that the profession’s attitude is that drinking is a part of being a lawyer. This is illustrated by one respondent’s comment that, “At almost every attorney function there is an open bar and a lot of drunk attorneys and their spouses are there.”

Among all respondents, in the previous 12 months 9.4% reported drinking on the job at least once and 3.8% reported going to work after drinking alcohol. However, reported drug use at work was quite low at slightly less than 2%, but most respondents also reported that it would be easy or very easy to obtain and use drugs at work. It is important to note that these statistics likely reflect the aforementioned social desirability bias in reporting personal behavior.

The news about drinking among lawyers is not all cause for concern, however. Although 5.4% reported active alcohol or other drug abuse issues, 7.9% considered themselves to be recovering or recovered from past alcohol or other drug abuse. The length of continuous recovery ranged from less than one to 50 years, with a 15-year mean length of recovery. This may be, in part, a result of the work of the Lawyer Assistance Program (LAP). A remarkable 97.4% of respondents reported knowing about the LAP, and 70.2% felt confident or very confident that they would refer colleagues

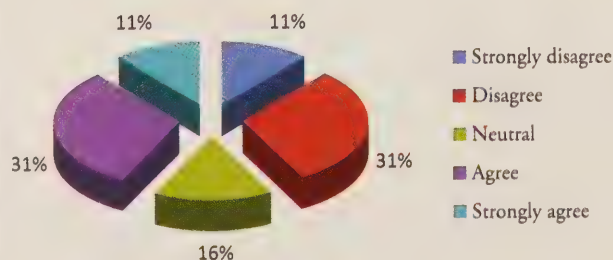
to the LAP. Professionals tend to be reluctant to seek help for themselves, and the participants in this survey were no different. Nevertheless, 36.8% felt confident or very confident that they would use the LAP for their own personal issues—perhaps because most respondents (55.8%) felt that their use of it would remain confidential.

Unfortunately, the lawyers in this sample were not inclined to seek other kinds of professional help. In fact, the numbers were so low that they would not support statistically valid analysis. This reluctance was likely a consequence of lawyers’ individual opinions and characteristics. For example, less than half of respondents (42.7%) believed that the profession sincerely encouraged counseling, and although 54.2% of respondents personally believed that counseling was a good way to deal with personal problems, another 41.4% had mixed feelings about counseling. Most telling, perhaps, is that 48.4% either agreed or strongly agreed that they have difficulty asking for help.

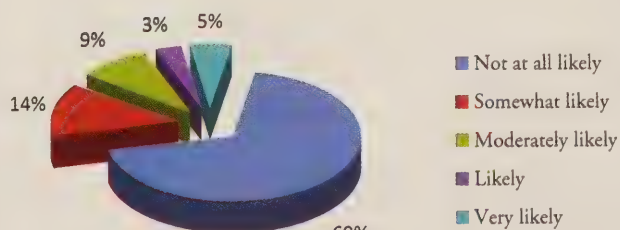
Additional evidence of lawyers’ reluctance to seek help was that although only 4.4% of the sample sought formal help for their alcohol or drug misuse, 7.7% of the entire sample reported using informal strategies. The most common techniques utilized included exercise, relaxation techniques, and talking with friends or family.

Law schools appeared unlikely to address alcohol and other drug misuse in their curricula. Sixty-seven percent of respondents reported having no training at all on the psychological aspects of chemical dependency, and another 14.8% reported having only one part of a class lecture on the topic. Only one-half of 1% reported having a course on the alcohol and drug misuse. Continuing education is,

Worked when too distressed to be effective



Likelihood of leaving law in next few years



however, available to lawyers. Among the respondents to the survey, 33.1% reported that the CLE presentations on mental health and addictions have been helpful or very helpful to them personally, but the typical response was "slightly helpful." Given the ongoing problem of alcohol and drug misuse among lawyers, it might be useful to consider developing current, evidence-based curricula for dissemination in law schools and continuing education environments.

A major concern for the legal profession, of course, is whether stress and other behavioral health issues impair their professionals' practice. Because of social desirability, it is difficult for lawyers and other professionals to self-report this kind of professional impairment, as so much of their identity and self worth is tied to their occupation. As a result, professional impairment is commonly measured by a response on a single survey item—"I have worked when I was too distressed to be effective." Among all respondents in this sample, 42.4% agreed or strongly agreed that they had worked when they were too distressed to be effective at their job.

Despite the concerns raised in this survey, most lawyers in this sample were not ready to leave the profession. When asked how likely it was that they would stop practicing law in the next few years for reasons other than retirement, 68.8% said that it was not at all likely, and only 8.7% said that it was likely or very likely. This may be evidence of their commitment to the profession, despite the occupational and personal stressors they feel. However, when asked if they would advise their children to become lawyers, 41.9% said that they would not. This survey item, often considered to be one of the best measures for assessing overall career satisfaction, highlights the ambivalence that many lawyers must be feeling about their work, also represented in the following written comments:

"Practicing law is extremely rewarding... and extremely stressful. I would only encourage a child of mine to become an attorney if they had some knowledge of what the work environment would be for them. I love what I do, but it wears hard on a person."

"Law is an exhausting profession. Many times I am drained by my work. However, sometimes it is very satisfying. I think it is pretty much the same for all professions/employment."

In contrast, several lawyers were quite clear about their feelings:

Web-Based Resources

North Carolina Lawyer Assistance Program
www.ncclap.org

National Institute of Mental Health
www.nimh.nih.gov

National Institute on Alcohol Abuse & Alcoholism
www.niaaa.nih.gov

National Institute on Drug Abuse
www.nida.nih.gov

Self-Help Fellowships
Alcoholics Anonymous
www.aa.org

Narcotics Anonymous
www.na.org

Gambler's Anonymous
www.gamblersanonymous.org

Sex and Love Addicts Anonymous
www.slaafws.org

Finding A Support Group
www.supportworks.org

Mental Health Resources
Depression & Bi-polar Support Alliance
www.dbsalliance.org

Manic-Depression
www.ndmda.org

Bipolar Support
www.lucidinterval.org

National Mental Health Association
www.nmha.org

BarCARES (Confidential Attorney Resource and Enrichment Services)
www.ncbar.org/about/barcares.aspx

Postpartum Depression
www.intellihealth.com

Eating Disorder Referral & Information
www.EDReferral.com

Addiction Resources
National Clearinghouse on Alcohol & Drug Information
ncadi.samhsa.gov

Sobriety and Recovery Resources
www.recoveryresources.org

National Institute on Drug Abuse
www.nida.nih.gov

Hotlines
National Helpline for Lawyers
1-866-LAW-LAPS

National Suicide Prevention Lifeline
1-800-273-TALK / 1-800-273-8255
www.suicidepreventionlifeline.org

HopeLine of North Carolina
Crisis Hotline: (800) 844-7410

"I will discourage my children from this profession, and hope to God they never consider it."

"I wish I had never gone to law school. My life is controlled entirely by my law practice. I have no free time. I am a slave to endless mounds of work. I hate the way judges tear into lawyers and are so cranky all the time, and disrespectful. I hope to get out of this profession as soon as possible. Too much risk. Bad for my health. My life is slipping away and I don't have time to enjoy it. Yes, I help people, but there's a cost—my health and livelihood. My personal life. It's not worth it."

"Very frankly, I would not go to law school today if a young person. The profession has

become much more specialized and is more stressful."

"It is tough feeling that you have people's lives in your hands sometimes. But I believe the Lord has enabled me to do this, and I view law as a serious and noble calling."

"I love that I got a chance to be a member of one of the noblest professions on earth—the practice of law."

This overview of the initial findings from the Work and Well-Being survey suggests that North Carolina lawyers face a significant number of occupational and personal challenges. Because the survey provided a very rich data

CONTINUED ON PAGE 17

A Kick in the Ass

BY ANONYMOUS

You don't have to live under a bridge to need some help. Sadly, some people have to lose enough to qualify to live under a bridge before they ask for help. That does not have to be you. I've been a lawyer for a decade and a half, though I am sometimes remind-

ed that I've been on this earth a lot longer. For better or worse, becoming a lawyer and practicing as a lawyer taught me some bad habits that affect my ability to make healthy decisions.

When I was a kid, it seemed pretty natural to ask for help when I needed it. Admittedly, I was a stubborn kid, and quite often you would hear the kid equivalent of, "No, no, I got it." Of course, most of the time I had no problem asking someone "bigger" than me to help me out. That's what adults are for, right?

I'm not entirely sure when I stopped thinking I could ask for help. Maybe it was in law school where competition made the perception of weakness something worth avoiding. Maybe it was in the practice of law where my clients looked to me to be strong and completely self-sufficient. Maybe it was in trial, where saying, "I don't know" did not seem like an option. Whatever it was and however it happened, I stopped asking for help.

A wise friend once pointed out to me that refusing to ask for help was the height of arrogance and ego. When I responded that my lack of asking for help might actually stem from low self-esteem or fear of being perceived as weak, he flatly said, "Isn't worrying about what other people think the height of selfishness and ego?" Touché my friend, touché.

By this point, most readers may have

thought of someone they know who obviously needs help. Possibly, that person is the reader, but probably not. We think of the person who is in obvious pain or obvious dysfunction—the lawyer who has "started to lose it." But every lawyer currently riding the "lost it" bus stood in the line for that bus for a long time, procrastinating about getting some help.

Let's face it, most lawyers are procrastinators. We have too much to do so we make daily triage decisions. Triage is healthy, but when we get to the point that our triage criteria is based upon our *fear*, then we are not making healthy decisions, especially if our fear is not based in facts but in emotions. What do I mean by that? Missing a looming statute of limitations is a fact-based fear. Avoiding speaking to a client because we have not completed promised work is a fact and an emotion-based fear. Not talking to anyone is a fear born from emotions and internal conflict. It is not healthy.

I'm not a big fan of the word "blame," but recognize that the heart of many lawyers' practices is assigning responsibility for harms and seeking redress for those harms. It is natural for

lawyers to seek out the "causation" of our issues and possibly assign "blame." If we procrastinate getting help for ourselves, it may well stem from the fact that we self-impose unrealistic expectations on ourselves. We can't make mistakes, we can't admit weaknesses, and we simply don't have the time to deal with issues outside of our practices. There is just not enough time for "us." Does that ring true?

Whether we like it or not, ignoring our personal issues won't make them go away. Typically, they just get worse. What starts out as a temporary coping mechanism can quickly become a deep-seated instinct or addiction. If we do not take the time to address our issues now, then it is quite likely our problems will rise up and strike back without asking our permission to do so.

Early in my career I had a perfect storm of bad news. My employer, without notice, dissolved the law practice and I found myself without a job and without financial resources. There were problems with my parents and family. My law school loans were oppressive and I had no real savings. I was in a panic and yet I found myself having trouble making decisions. Auto-pilot had kicked in, but I was flying an empty airplane with no flight plan, no destination in sight, and low fuel.

Essentially, I froze with indecision because all of the personal choices I had to make seemed too overwhelming for me. For example, I was not answering my phone. I could not bring myself to talk to people. I'd return their calls but sometimes it would take days. Opening the mail became torture. I felt like every letter would hold bad news. I had to force myself to get the mail open. When there was no bad news, I started thinking that the news was just going to arrive the next day. I would write a letter three times, unable to decide on the content. I would excruciate over legal pleadings, certain that I had forgotten some "magic word," my case would be thrown out, and I would be humiliated and get sued

by my client. Everything felt urgent, yet somehow I was immobile. Of course, I didn't sit completely still, but "reorganizing my sock drawer" (my term for any seemingly helpful task that is not addressing the real problem) was not providing much forward momentum.

Had you known all of these things and asked me how I was doing, I would have told you, "I'm fine. I got it."

I was fortunate that while I was perfectly willing to BS myself into thinking that things were "ok," some people I loved were not willing to let me. They told me, "You are depressed. You need to talk to someone."

In a pivotal moment in my life, I was willing to try something new. Not only something new, but something that scared me and certainly threatened my idea of who I was.

Therapy was an amazing and positive experience. I wholeheartedly recommend it to anyone. I learned that my "immobility" was a result of moderate depression brought on by some difficult circumstances. Not a big surprise. I also learned that I had a lot of coping mechanisms from my life before law and my formative years that were not serving me well anymore. These coping mechanisms were deeply ingrained because when they developed they were survival mechanisms. I learned that those survival mechanisms were not helpful to me anymore, and in fact

were hurtful and counterproductive. The good news was that I didn't need them anymore. Therapy helped me let go of those outdated instincts and substitute healthy instincts.

If I had been left on my own, I'm sure I would have survived that difficult time in my life, but I also know I would not have improved my inner-life. I would have simply "managed." Managing is not a really good life plan. And for me, long-term "managing" always resulted in bad side effects when my outmoded survival instincts kicked in.

My doctor prescribed antidepressants for a while. I really did not want to take them. Not my style, I would have said. My doctor said, "If I told you you were a diabetic and needed insulin, would you tell me it's 'not your style?'" Touché doctor, touché.

The antidepressants kicked in after a few weeks. I didn't feel elated. I didn't have a smile

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The Charlotte School of Law is looking for tenure-track faculty for the 2011 academic year. Our mission is to provide a legal education that is student-centered, facilitates practice readiness, fosters personal integrity, and serves underserved communities. Striving to create a collegial work environment, we value emotional intelligence as much as IQ. In keeping with our practice ready mission, we prefer candidates with 4+ years of legal practice experience. For more details please visit www.charlottelaw.edu/jobs.asp.

on my face all the time. In fact, I hardly felt all that "up." But what I did notice was that decisions that had seemed overwhelming to me a few weeks earlier suddenly became less "life or death" for me. I started sleeping better and I was able to wake up and actually look forward to the day.

I had been wrong about the antidepressants. I had thought they would "boost" my mood. But what I came to realize was that depression had been hampering me, adding a lot of unnecessary weight to my backpack of real life issues. Once the medication became effective, the extra "rocks" of depression were taken out of my backpack and I could march forward, stronger and better. Antidepressants and therapy did not change who I was, they simply returned me to what I could be.

I'm still on my journey of being me. Each day holds new challenges, but I have a firm foundation upon which I can act. My career has been incredibly fulfilling since I came out of that dark place so many years ago.

I count myself as very lucky that I got some help early. Other than a few irritated clients, there were no long-term negative consequences to my career because of my depression. I don't know if I would have sought help on my own. I needed a kick in the ass. I'm just glad it came before I started losing people and things I held dear. I never had to live under that bridge, and I don't regret that for a moment.

Not everyone has someone who will reach out and encourage them to talk or get help. If you don't have that person and you can identify with any of the feelings in this article, please consider this your kick

in the ass. It is done with kindness and love because you deserve to live a fulfilling life. It can get better. ■

If you are having problems with alcoholism, other drug addictions, or mental health disorders, contact the Lawyer Assistance Program, a service of the North Carolina State Bar which provides confidential assistance to North Carolina lawyers to help them identify and address these problems. Go to www.nclap.org for your regional toll-free number. If you are eligible for the NC Bar Association's BarCARES benefit, which provides three free sessions of counseling, the Lawyer Assistance Program will assist in referring you to a therapist that will allow you to get this benefit.

Work and Well-Being (cont.)

set, we anticipate future articles with more in-depth analysis on a variety of topics to provide further insight into the well-being of North Carolina lawyers. For now, the bottom line is that the level of stress and occupational dissatisfaction is high. The tendency of lawyers to take medication has dramatically changed, but their reluctance to seek counseling remains very great. The good news from the survey is that the Lawyer Assistance Program is universally known. In addition, the substantial number of lawyers self-reporting as being in recovery from alcohol or drug abuse is noteworthy, likely indicating that the Lawyer Assistance Program is effectively carrying out much of its mission. On the other hand, there is still much room for improvement in creating less stressful work environments for lawyers and in providing an atmosphere within the profession where those needing assistance will more readily be willing to reach out for it. ■

Darcy Siebert, Ph.D., is an associate professor at Rutgers School of Social Work.

*Therapy was
an amazing
and positive
experience. I
wholeheartedly
recommend it
to anyone.*

Suicide in the Legal Profession

BY BARBARA A. SCARBORO AND TOWANDA C. GARNER

Suicide recently received national attention from the president of



the United States, the US Department of Health and Human Services (DHHS), the surgeon general, the Center for Disease Control and the Substance Abuse

and Mental Health Administration (SAMSHA). The amplified concern related to the increased prevalence of suicidal thoughts and behaviors resulted in the aforementioned entities compiling a Treatment Improvement Protocol (TIP). TIP was compiled to provide research-based information for substance abuse counselors' preparation and utilization with clients and/or family members presenting with suicidal thoughts or ideations.

Suicide as a growing concern is further exemplified by statistics. The National Center for Health Statistics reported in 2006 an annual increase in deaths by suicide every year, totaling over 33,000 people in the United States dying by suicide every year. This is equivalent to 91 suicides per day, one suicide every 16 minutes or 10.95 suicides

per 100,000 people.

Suicide dates back to early civilization, with the most frequent method identified as hanging. Suicide is generally precluded by surmounting distress and pain-rendering feelings of disdain with little to no hope of managing or recovering from the mental anguish. TIP researchers comprised of a dis-

tinguished panel of experts defined suicide, suicidal behaviors, suicidal thoughts, as well as nonsuicidal thoughts and behaviors: "Suicide is a deliberate act of self-harm with at least some intent to die that results in death. Suicide attempt is a deliberate act of self-harm with at least some intent to die that does not result in death. Such acts have a wide range of medical seriousness. Suicidal ideations are thoughts of attempting suicide. Such thoughts have a wide range of specificity, intensity, and frequency. Suicide plans are a severe form of suicidal ideations that include identifying a method or scenario to attempt suicide."¹ Behaviors identified as nonsuicidal thoughts and behaviors were characterized as "thoughts of dying but without ideas for suicidal behavior *per se*. Nonsuicidal self-injurious behaviors are self-directed acts of self-harm without intent to die. Broadly, these acts tend to have intrapersonal (e.g., manage emotions) or interpersonal (e.g., communicate distress) motiva-

tions and include a variety of behaviors (cutting, piercing, burning) and a wide range of medical seriousness.”²

Incidences of suicide have impacted the legal profession resulting in the loss of valuable members. According to NC LAP Director Don Carroll, some statistical data suggest that lawyers are more at risk for suicide than other professions or vocations. Results from a 1992 National Institute of Occupational Safety and Health study indicated that male lawyers in the United States are twice as likely to commit suicide in comparison to their counterparts in the general population.³ Suicide is the second leading cause of death among 25-34 year olds and the third leading cause of death among 15-24-year olds. Males take their own lives at nearly four times the rate of females and represent 79.0% of all US suicides. Suicide rates for males are highest among those aged 75 and older (at a rate of 35.7 per 100,000). Females’ susceptibility is reportedly steady with a ten-

dency to peak during their 40s.⁴ Similarly, a 1997 study found that suicide was the third leading cause of death among lawyers insured by Canadian Bar Insurance.⁵ Cancer and heart problems were the leading reasons for death claims for the two-year period studied. The suicide rate was about 69 deaths per 100,000 people, nearly six times the suicide rate in the general population, according to a study summary. From a multicultural perspective, in the US suicide is highest among white males, American Indians, and Alaska Native males. Lower incidences of suicide are purportedly among African American and Hispanic or Latino females.⁶ The latest data from the National Center for Injury Prevention and Control reported a total of 32,637 deaths by suicide in 2005.

Suicidal behaviors often co-occur with substance abuse or other diagnosable emotional and psychological disorders. Suicidal behaviors and substance abuse disorders co-occur more often than not.⁷ Although psychological disorders are not associated with all suicides, it is reported that nearly 90% of adults who commit suicide have a diagnosable psychological disorder.⁸ The most frequent co-occurring are major depression, schizophrenia, and alcohol-related disorders.

Among lawyers, judges, and law students, depression has been reported as a major concern and a predisposing risk factor for suicide. Within the legal profession, about 19% of lawyers experience depression at any given time, compared with 6.7% of the general population. Other contributory factors to higher suicide rates within the legal profession include, but are not limited to, personality characteristics associated with lawyers such as perfectionism and competitiveness, co-occurring with depression.⁹

For some people, depression is so painful that their thoughts turn recurrently to ideas about escaping from the torment that characterizes every day.¹⁰ It is suggested that the risk of suicide is greatly elevated among people with severe mood disorders, such as major depression and bipolar disorder; thus, it is critical that the signs and symptoms of depression are clearly recognized to help avert a possible suicide.

Symptoms of depression include the following: depressed mood or loss of interest or pleasure in nearly all activities (i.e., changes in appetite or weight, sleep, and psychomotor activity; decreased energy; feelings of worthlessness or guilt; difficulty thinking,

What Are the Warning Signs?

1. A deepening depression
2. Pre-suicidal comments or statements.
3. Putting affairs in order and making final arrangements.
4. Unexplained cheerfulness.
5. Serious risk taking.
6. Other self-destructive behavior.

concentrating, or making decisions; or recurrent thoughts of death or suicidal ideation, plans, or attempts.¹¹ These diagnostic criteria or signs and symptoms manifest differently in each individual. In diagnosing clinical depression, it is not necessary for an individual to exhibit all the signs or symptoms: “the diagnosis is typically made if at least a few signs are evident, particularly a mood of profound sadness that is out of proportion to the person’s life situation, and a loss of interest and pleasure in previously enjoyable activities.”¹² According to the American Foundation for Suicide Prevention, about 15% of the population will suffer from clinical depression at some time during their lifetime; 30% of all clinically depressed patients attempt suicide; 15% of them succeed over a lifetime. Individuals diagnosed with a mental disorder are between seven and 10% at greater risk of committing suicide.¹³

Carroll stated that “depressed individuals may be more prone to use addictive substances to deal with feelings of sadness and isolation.” While approximately 10% of the population suffers from alcoholism, the number jumps to almost 20% in the legal profession, or one in five lawyers.¹⁴ Substance abusers are ten times more likely to commit suicide than the general population. The American Foundation for Suicide Prevention reported that alcohol is a factor in about 30% of all completed suicides. Over 60% of all people who commit suicide suffer from an affective disorder. If one includes alcoholics who are depressed, this figure rises to over 75%.¹⁵

The highly alarming statistics presented illustrate the urgency to address suicide within the legal profession and to encourage seeking assistance to promote wellness.

What Are the Signs?

Throughout the literature, circumstances precipitating and contributing to suicidal

Statistics Regarding Depression, Alcohol Abuse and Suicide Among Lawyers

■ Research conducted at Campbell University in North Carolina indicated that 11% of the lawyers in that state thought of taking their own life at least once a month.

■ According to a 1991 Johns Hopkins University study of depression in 105 professions, lawyers ranked number one in the incidence of depression.

■ Male lawyers in the United States are two times more likely to commit suicide than men in the general population (National Institute for Occupational Safety and Health, 1992).

■ One in four lawyers suffers from elevated feelings of psychological distress, including feelings of inadequacy, inferiority, anxiety, social alienation, isolation and depression (*Bar Leader Magazine*, March/April 1998).

■ There is a higher rate of depression among law students than any other professional student body (Tennessee Bar Association, 2007).

What You Can Do To Help Save a Life

1. Take it seriously.
2. Remember: Suicidal behavior is a cry for help.
3. Be willing to give and get help sooner than later.
4. Listen.
5. Ask: "Are you having thoughts of suicide?"
6. If the person is acutely suicidal, **DO NOT LEAVE THEM ALONE.**
7. Urge professional help.
8. No secrets.
9. From crisis to recovery

Source: *Tips from Suicide Prevention Resources* (2004).

thoughts and behavior are coined risk factors, while factors in an individual's life that prevent, reduce, or alleviate risk factors—thus decreasing suicidal thoughts and behaviors—are called protective factors. Risk and protective factors vary individually, but should be identified when suicidal thoughts or ideations are suspected or assessed. As listed by the *Desk Manual on Mental Illness for LAP Directors*, here are some signs to observe, question, and assess.

1. **A deepening depression** or expressions of utter despair or hopelessness. Such feelings may indicate a downward spiral, especially if combined with the use of alcohol or harmful drugs.

2. **Pre-suicidal comments or statements.** Often suicidal people will actually make suspicious comments about suicide, death, or despair or hopelessness. These statements can be missed or even ignored if the listener is confused or embarrassed.

3. **Putting affairs in order and making final arrangements.** A pre-suicidal person may suddenly finish a will, give away prized possessions, or put their affairs in order for the first time in a long time. Sometimes they will make direct or even vague statements that they are not going to be around.

4. **Unexplained cheerfulness.** A suicidal person may suddenly appear cheerful after a long period of being down. Their depression may suddenly be replaced by a strange elevated mood. It seems that a decision to commit suicide can serve to remove the burdens or the

perception of burdens on a suicidal person. Having decided on a solution, the suicidal person may feel a lessening of their pain.

5. **Serious risk taking.** Driving at high speeds is a perfect example. There are many, many unexplained, single-occupant car accidents where someone appears to have driven into a barrier or off the road.

6. **Other self-destructive behavior.** These may include severe bouts of drinking or drug abuse, or even walking the winter streets without hat, coats, or boots.

Protective factors may consist of the following: access to and participation in counseling or clinical intervention; family, church or community support; effective stress management, conflict resolution or problem-solving skills; values or cultural characteristics that frown upon suicide; or children or other responsibilities. Understanding suicidal tendencies or behaviors is critical in obtaining professional help for the individual at risk. Dispelling misunderstandings or myths is essential to preventing suicide and accessing professional help.

Some Myths and Facts About Suicide

1. **Myth:** People who talk about suicide are just seeking attention and won't really try to kill themselves.

Fact: Studies show that 75% of those who commit suicide talk about it or display other warning signs before attempting it.

2. **Myth:** Suicidal people are intent upon dying.

Fact: The majority of suicidal people are not intent upon dying. Often, they simply see no other viable option. The warning signs they give are desperate calls for help before they choose this final option.

3. **Myth:** Talking about suicide and a person's suicidal feelings will only encourage that person to commit suicide.

Fact: Talking about suicide may be the only thing that can save the person's life. It can give them a sense of connection and hope. It shows the person that someone cares and finds them important enough to listen to and help.

4. **Myth:** Improvement in emotional state means less risk of suicide.

Fact: The fact is that people often commit the act after their spirits begin to rise and energy level improves; this appears to be especially true of depressed patients.

Most people have suicidal thoughts or feelings at some point in their lives; yet less

than 2% of all deaths are suicides. Nearly all suicidal people suffer from conditions that will pass with time or with the assistance of a recovery program. There are many modest steps that can be taken to improve the response to the suicidal individual and to make it easier for a person to seek help. Taking these steps can save many lives and reduce a great deal of human suffering. ■

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Endnotes

1. US Department of Health and Human Services, Treatment Improvement Protocol (TIP) 50 Series, *Addressing Suicidal Thoughts and Behaviors: Part 3* (2009).
2. *Id.*
3. Jones, D. P., & Crowley, M. J., *Depression and Suicide* (2006), retrieved August 24, 2009, www.mobar.org.
4. National Center for Injury Prevention and Control, *WISQAR Fatal Injuries: Leading Causes of Death Reports* (2007).
5. Weiss, D. C., *Lawyer Personalities May Contribute to Increased Suicide Risk*, ABA Journal - Law News Now (2009).
6. See note 4 above.
7. Kessler, R.C., Borges, G., & Walters, E.E., *Prevalence Of and Risk Factors for Lifetime Suicide Attempts in the National Comorbidity Survey*, Archives of General Psychiatry, 56, 617-626 (1999).
8. *Id.*
9. See note 5 above.
10. Halgin, R. P., & Whitbourne, S. K., *Abnormal Psychology: Clinical Perspectives on Psychological Disorders* (5th Ed.), (New York, NY, McGraw-Hill, 2008).
11. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (2000).
12. Davison, G., Neale, J. M., *Abnormal Psychology* (6th Ed.), (New York: John Wiley & Sons, Inc., 1994).
13. Cavanagh, J.T., Carson, A.J., Sharpe, M., & Lawrie, S.M. (2003). *Psychological Autopsy Studies of Suicide: A Systematic Review*, Psychological Medicine, 33, 395-405.
14. Sweeney, M. J. *The Devastation of Depression: Lawyers Are At a Greater Risk—It's an Impairment to Take Seriously*, viewed February 2, 2008, www.abanet.org/barserv/22-6dev.html.
15. American Foundation for Suicide Prevention, *Facts About Suicide* (1995), viewed August 24, 2009, www.afsp.org.

Alcoholism is a Family Disease

BY ANONYMOUS

Both of my parents are alcoholic. My mother was able to get sober in AA. My father was not. Seven

years ago I fed my father scotch and water out of a Styrofoam cup in the hospice unit so that he would not go into DTs. I grew up in a time before the

words “domestic violence” were coined. My parents just drank and fought. My mom admits that she initiated the physical fights. But my dad always won them. In those days she just donned oversized sunglasses to hide the black eyes. I have too many memories of fleeing our home in the middle of the night—me in my cotton flower-print nightgown, my younger brother in his Scooby-Doo footie pajamas—my mother dragging us from our beds, escaping to the safety of my aunt’s house.

Once I grabbed my cat in the mad dash to the car. To my six-year-old mind the cat, too, must have been in danger. Looking out the back windshield of the car, I watched my father watch us drive away. He was yelling. Or crying. You see, everyone is a victim of the

disease of alcoholism, including the drinker.

When I was four years old, my parents began a dance to the tune of separate-then-try-to-make-it-work-again. Once, my mother picked me and my brother up from school, then took us “home” to a different place than



the one we left that morning. It was all very dramatic. She had called in sick that day, secretly left my father, and moved our belongings to an undisclosed location. No matter. Dad was living with us again a few months later. They finally divorced when I was eight, but that did not stop the insanity. As my mom’s alcoholism progressed, various men from the bars made their way through our house. Stepping over a huge slob of a man passed out face down across the living room floor one night, I looked over at my mother and said, “What are you doing?” (not in the colloquial sense). I was nine.

Given the chaos of my home life, school provided stability and safe haven. Teachers suspected something was amiss. I doubt they could have guessed anything near the truth. My mother was a well-known and respected professional in the community. And she was really good at her job. She was a “highly functional alcoholic.” Many teachers gave me special attention, for which I am eternally grateful. It worked; I thrived in school. I

knew exactly what was expected and I could deliver. In return I received the praise, acknowledgement, and recognition I so desperately craved. Achievement became a major coping mechanism. It served as a substitute for what I was not getting at home and what I never learned to give to myself.

My parents both suffered from blackouts. A blackout is different from passing out. A person in a blackout walks and talks and goes about doing whatever she/he is doing, but has no memory of it the next day. For those of us that do remember, it is literally crazy trying to live with this on a day-to-day basis: missed appointments, being left somewhere, forgotten about, being told something did not happen that I watched happen with my own eyes. But I learned (as early as three years old) not to say anything about what went on lest I suffer a beating. When people suffer from blackouts and you are dependent upon them for things like food, shelter, and safety, you learn quickly how to survive—and how to stop depending on them as soon as you imagine you are able (even if you are not).

By the age of ten I was as self-sufficient as a ten-year-old raising herself could be: cooking, cleaning, raising my brother, and counseling my mother. When my mother moved in with and eventually married my stepfather, my defensive and survival patterns became deeply ingrained. My stepfather did not drink, nor did he work. He was an uncovered adult child of an alcoholic and was prone to binges of rage—tantrums complete with property destruction thrown in as a bonus. Thankfully he eventually found Al-Anon (after I had left for college) and was able to heal from the abuse he suffered as a child. I will not detail my life with my stepfather here other than to say it was drilled into our heads daily that we, the kids, had caused and were responsible for his anger and outbursts. My mother looked to me, her 11-year-old daughter, for every type of emotional support and rescue in the chaos of that abusive relationship.

I was the parent, she the child. As the first born, I was thrust into the role of hero/rescuer. My mother heaped every unmet expectation or disappointment of her life on to me. She put me on a pedestal and lived vicariously through my every achievement. My achievements masked the shame I felt about my family—I put forth quite an image to the world and lost connection to myself and my

heart in the process. It does not take a PhD in psychology to discern how growing up in this environment might impact the formation of a child's personality, perceptions, coping mechanisms, and reactions to life. I began drinking at 13 to anesthetize the pain. By 18 I found no reason to live. But, as these things go, God had other plans for me and I found AA and got sober. Not a blip on my résumé would ever show what was happening behind the scenes.

I went to college, then eventually on to law school. I excelled but was driven in a way that was self-destructive. I was a true perfectionist and workaholic. My personal relationships were a disaster. I always picked totally irresponsible, emotionally abusive, alcoholic men who needed rescue, and I scrambled to do everything I could for them so I could earn their love. Work relationships weren't much better. I always wound up with exploitative bosses who publically degraded me while I worked tirelessly, running myself ragged to prove I could do a good job and earn their approval. Alcoholism affects people differently. This description, taken from an Al-Anon book entitled *From Survival to Recovery*, aptly sums up how it impacted me:

Growing up with the chaos and unpredictability created by alcoholism caused many of us to mask our confusion, anger, and shame by trying to be perfect. To prove to ourselves and the world that there was nothing wrong with us or our families, we scrambled hard in school to get straight A's, or worked feverishly at home to keep everything neat and tidy. We became star athletes, artists, corporate leaders, humanitarians, and outstanding citizens. Inside, however, we feel driven, terrified of failure, unable to relax or play, and lonely. Toward less responsible people who seem to make our efforts at perfection harder, we often feel self-righteous and angry. Convinced that something terrible will happen if we lose control, we run ourselves ragged trying to take charge of everything and never know how much is enough. Until we begin to recover, many of us are trapped in a compulsive need to give more, love more, and do more.

For me, being sober and working a committed program in AA did not address or fix these problems or tendencies I had. AA could not lay a glove on them. But my AA program was what led me to the doors of Al-Anon right before I entered law school.

In law school I struggled with picking the right legal career path. Desperately needing others' approval, validation, and recognition, it was unclear which path to take. With constant outspoken pressure from my mother to save the world (and the need to gain her approval), a public interest job seemed best; yet a job at a big firm would look good and show the world (really, convince me) that I was good enough after all. By the time I graduated law school I had 15 years of sobriety and enough self-awareness to know that, given my penchant for rescuing, a job at legal aid (my natural inclination) would probably kill me. I did not know I was still trying to mask my own shame, and the pull of the big firm image of success was too much to resist, so that was my choice. If only it had worked to heal me! It didn't. I did not realize that the nature of the job is actually unimportant when a person has no internal boundaries.

Some key concepts in Al-Anon are boundaries and detachment. Before coming to Al-Anon, I could not separate me from you. Your problems were, by definition, my problems. It was my responsibility to fix, rescue, and save you—even from yourself and your bad choices. I was a Solution Provider. (It took a little while in Al-Anon to realize other people experienced that as control.) So it might not surprise you to learn that no matter what job I landed, I was going to be in trouble. How alcoholism works in my life (even when no one is drinking), is that I need to make you OK so I can be OK.

I began in a litigation practice and found I could not detach from the difficulties of my clients. Whether they made a bad business decision that had cost them financially or were having health problems and trying to get disability, I was up at night, losing sleep, obsessively thinking about how to win their cases so they would be OK. A partner at the firm stepped into my office one day and expressed concern that I might be "going too far" in a case and that I needed to "learn to step back a little" from the situation. I began using the Al-Anon principles at work and began getting a better night's sleep. I began detaching from client's bad choices. I learned that it was not my chaos, my drama, my life. Some of this comes naturally to those who were not raised with alcoholism, but for those of us who were, it is a monumental shift in consciousness and a big step towards freedom.

Though my spiritual development and

seeking in Al-Anon, I realized I had been grasping for external approval and recognition though achievement. The problem was, because I was unhealed inside, it was never enough. Another passage from the Al-Anon literature states, "[Growing up in an alcoholic home means] needing to hear over and over again, 'You're wonderful!' yet never believing it. So I always need to hear it again, and it's still not enough. It's feeling that I am not enough. It's having to do [more] so that I can earn love [respect, happiness], yet feeling that what I give is never enough."

How did that manifest for me as it relates to my legal career (and life)? Awards, accolades, plaques of recognition and achievement, winning law school competitions, young lawyer committees and bar leadership roles, billing billing billing to gain the praise of partners, working so many hours to the very real detriment of my marriage, and being so lost in perfectionism, people pleasing, and approval seeking that I had no true idea of who I was, what I valued, or even what I wanted. My entire worth and identity were wrapped up in what you (the legal community, in this case) thought of me. And you actually thought very highly of me. But one day I woke up and realized I was just miserable. (One of the gifts of working a program in AA/Al-Anon is that I cannot stay miserable for too long without waking up to it and then having to do something about it.) I saw that for me it was all an illusory payoff, like being invited to a black tie gourmet dinner made entirely of...air. I leave hungry. If my worth and value is not coming from a wellspring within me, from an intrinsic place inside, and is instead dependent upon external praise, rewards, and accolades, then I am doomed, for I must always have the next, better notch in my belt to continue to affirm my worth. Coming from that place, it is too risky to ask what it might mean about me and my value or worth if I did not win or you did not approve.

The workaholism and associated recognition, while temporarily making me feel a bit superior to those around me, sucked the very joy out of my life. Neither is it a good way to attract genuine or meaningful friends. My driven perfectionism left me with no emotional energy for my marriage or myself. No creativity. No spontaneity. I was constantly driven by the next task, the next item on the to-do list. And I did this in multiple areas of my life, not just work. It is an exhausting

Take the Alcoholism Test

YES NO

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Do you get to work late or leave early due to drinking? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Is drinking disturbing your home life? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Do you drink because you are shy with other people? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Do you wonder if drinking is affecting your reputation? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Have you gotten into financial difficulties as a result of drinking? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Does drinking make you neglect your family or family activities? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Has your ambition decreased since you started drinking? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Do you often drink alone? |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Does drinking determine the people you tend to be with? |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Do you crave a drink at a definite time of day? |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Do you want a drink the next morning? |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Does drinking cause you to have difficulty sleeping? |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. Is it difficult being honest with your physician about your drinking? |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. Do you drink to build up your self-confidence? |
| <input type="checkbox"/> | <input type="checkbox"/> | 15. Have you ever been to a hospital or institution because of drinking? |
| <input type="checkbox"/> | <input type="checkbox"/> | 16. Do family or friends ever question the amount you drink? |

If you answered yes to two or more of these questions or if you are simply sick and tired of being sick and tired, you should call PALS today.

way to live. I discovered that striving to be and appear perfect, winning awards, and gaining the praise of colleagues does not fulfill my soul, connect me to others, or bring me the peace I crave. It never will.

There is something to be said for actually achieving and getting everything you ever thought you needed in order to make you feel happy and fulfilled and finding it falls flat. I knew it wasn't working, which propelled me to search further, deeper, in a completely different direction. So I left the big firm and ventured out into new territory, seeking to find a legal career (and life) that was more satisfying and authentic. I

detail for you here my career path, but as much or more was happening in my personal relationships and my spiritual development as I progressed with working my Al-Anon program.

I eventually landed in a small firm with a niche practice, working from home. No office on the 30th floor overlooking the city. No suit. No big-firm name backing me up. No business card. Nobody knew where I worked or even what I was really doing. Nobody "out there" was providing any recognition or approval. And I stopped striving for it. And the funniest thing happened. I was set free. I was happier in my work and my life

Fire Investigator available to conduct origin and cause, and other fire investigation services. Retired police fire investigator, certified, licensed, and insured. Visit my website at www.pyropi.com. Contact me at 919-625-8556 or scott.hume@nc.rr.com.

and with myself than I had ever been. After years of chasing after it out there, I found what I had always been looking for deep within myself, in my own heart. I stopped the human DO-ing to learn to become a human BE-ing.

Through some serendipity I ended up at the right time getting help from the Lawyer Assistance Program. What I had not gotten in 12-step programs I got with the LAP. A new page turned.

Today I am working on living authentically, from a place grounded in feeling and knowing my intrinsic worth regardless of what others may or may not think of me. This is a relatively new chapter in my life. For

the first time in my life I have the feeling that life is a great adventure rather than something to be endured or something to just "get through." I am feeling free in my spirit in ways I never have before. I have the sense that life is a canvas where I am invited to paint my own picture from deep within my being. The joy and peace are indescribable. This does not mean I do not have other feelings that come up like anger or grief, but today I seem to be centered more in a place of acceptance and joy rather than a place of snappy, irritable impatience, as was typical not too long ago. I am finding that qualities like compassion, love, acceptance, forgiveness, gratitude, and humility that I used to strive to obtain are just springing up in me without conscious effort. They are a by-product of my deepening spiritual work, which has always been rooted in the 12 steps. The need to rescue, fix, manage, or control others has, for the most part, slipped away. It still pops up from time to time, but I am acutely aware of it and stop it as soon as I recognize it. I no longer need to jump into the tornado or aftermath of other people's problems, unhealthy decisions, or

behaviors. I don't need to be right all of the time or always demand that I get my way. I can let go of things much more easily, because I have seen that most of what I spend a lot of emotional energy proving I am right about does not even matter. I am opening up my heart and finding a host of friends who welcome and embrace my newly developing authenticity and vulnerability.

There is no way in these few words to describe the depth at which alcoholism shaped who I am as a person or to detail the countless ways in which AA and Al-Anon have saved me, and the Lawyer Assistance Program has added a special touch to my recovery. Most of all, I am beginning to appreciate how precious this life is and that I am lucky enough to have been given a chance to live it fully, as I believe God intended. ■

This article is written by a LAP participant and is presented anonymously in the spirit of 12-step programs. If you would like to communicate with the author, please e-mail Don_Carroll@nclap.net and he will forward your message.

The LAP Story (cont.)

for this position in 2005. Towanda comes to the LAP staff with extensive experience and credentials for working with individuals suffering from addiction and depression.

In the past five years Towanda Garner has worked extensively with law schools in North Carolina, enlightening students about the confidential services provided by the LAP for law students experiencing problems with alcohol abuse, chemical addiction, and/or mental health problems. Like the rest of the LAP staff, Towanda leads peer support groups.

On October 1, 2005, the LAP Board unanimously adopted *Guidelines to Avoid Conflict with the Establishment Clause*. These guidelines were adopted to clearly articulate that participation in AA, or similar 12-step programs incidental to participation in the LAP, is voluntary on behalf of any lawyer participant. Later, Assistant Director Ed Ward was named in a suit along with a North Carolina treatment center alleging that the claimant's Establishment Clause rights were violated. A dismissal of the suit against Ed was later taken. Although litigation is never a

pleasant prospect, the results of the suit were positive in reaffirming the Lawyer Assistance Program's goal of trying to assure that any assistance provided to a lawyer fits with what is most appropriate for that lawyer. This kind of individualized treatment assistance has been shown to be most effective clinically and been the goal that the LAP has pursued. In addition, the issues raised by this suit resulted in the LAP Board's requesting that the Bar Council delete a rule that provided that the LAP could refer a matter to Grievance. The rule in question had never been used to anyone's knowledge and was inherently in conflict with other Bar rules which required the LAP to zealously protect each lawyer client's confidentiality. The Bar Council agreed with the LAP Board's request and deleted the rule so that it would be unambiguous that a participant in the LAP would have his or her confidentiality protected.

During 2007, as a result of a suicide by a Hickory lawyer after he was served with a discipline subpoena, the LAP program undertook to work with Grievance on a policy to help minimize suicide risk. Under this policy, the LAP program is to be advised ahead of time of when a suicide risk subpoena might

be served so that there is time for LAP volunteers to visit the lawyer in question. It is believed that this policy has been effective to help minimize suicide risk and in at least one case. (A lawyer, who the LAP reached out to right before he was disbarred, stated that the LAP's outreach prevented his suicide.) Towanda Garner and Board member Barbara Scarboro, a professor at Appalachian State, combined to develop a suicide prevention program that has been shown to a number of Bar groups since 2008.

The Lawyer Assistance Program is present throughout the legal profession of North Carolina including the law schools, the practicing bar, and the judiciary. LAP, through its volunteer committees of PALS and FRIENDS, is always available to help our fellow professionals with substance abuse or mental health problems. The assistance of LAP is only a phone call away. ■

This article is a joint effort based on a 1999 Journal article by Judge Jerry Leonard, an interview with Judge Leonard, and collaboration from Ashe Lockhart, PALS Volunteer, and Don Carroll, Ed Ward, and Towanda Garner of the LAP Staff.

Identifying Depression and What to Do

BY DON CARROLL

Depression is an illness that involves the whole person. It includes the person's body, mood, and thinking. It affects eating and sleeping habits. Depression

influences how you feel about yourself and your thoughts about your life.

Almost everyone who suffers from a problem with alcohol or other drug addiction experiences the symptoms of depression. In other words, the addictive use of alcohol is likely to create a cycle of depressive feelings. Despite the sensation of elevated mood that occur when one first drinks, alcohol is a toxic sedative and central nervous system depressant. If there are issues of depression, one should avoid the use of alcohol. If it is difficult to avoid using alcohol, then this is a clear indication one should be evaluated for a problem of alcohol abuse.

Depression is not the same as an appropriate response to normal, but difficult, emotional events in life such as the loss of a loved one. Depression is also not a sign of personal weakness. This is difficult for lawyers who often believe that they should be able to will or wish away something that's bothering them.

Like, alcoholism and other medical illnesses, depression gets worse if it is not treated. Statistics suggest that depression affects as many as 15% of the population, and lawyer survey data suggests that lawyers are affected in the range of 20-30% at some time during their years of practice. Depression has also

been found to be about twice as common in women as in men. Men appear to be at greater risk when they are older and single.

Depression, like alcoholism, is often difficult to identify because we have in our minds an idea of what it looks like when, in fact, it comes in different forms. The two predominant forms of depression are Major Depression and Dysthymia.

Symptoms of Major Depression

- Persistent sad, anxious, or "empty" mood
- Feelings of hopelessness, pessimism
- Feelings of guilt, worthlessness, helplessness
- Loss of interest or pleasure in hobbies and activities that were once enjoyed, including sex
- Decreased energy, fatigue, being "slowed down"
- Difficulty concentrating, remembering, making decisions
- Trouble sleeping, early-morning awakening, or oversleeping
- Appetite and/or weight changes
- Thoughts of death or suicide, or suicide attempts



- Restlessness, irritability
- Persistent physical symptoms such as headaches, digestive disorders, and chronic pain, which do not respond to routine treatment.

Symptoms of Dysthymia

- Appetite and/or weight changes
- Trouble sleeping, early-morning awakening, or oversleeping
- Decreased energy, fatigue
- Low self-esteem
- Poor concentration or difficulty making decisions
- Feelings of hopelessness.

What Lawyers Can Do About Depression

1. Contact your Lawyer Assistance

Take the Depression Test

If you or someone you care about answers yes to five or more of these questions (including questions #1 or #2)...and if the symptoms described have been present nearly every day for two weeks or more, you should consider speaking to a health care professional about different treatment options for depression.

YES NO

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Do you or they feel a deep sense of depression, sadness, or hopelessness most of the day? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Have you or they experienced diminished interest in most or all activities? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Have you or they experienced significant appetite or weight change when not dieting? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Have you or they experienced a significant change in sleeping patterns? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Do you or they feel unusually restless...or unusually sluggish? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Do you or they feel unduly fatigued? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Do you or they experience persistent feelings of hopelessness or inappropriate feelings of guilt? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Have you or they experienced a diminished ability to think or concentrate? |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Do you or they have recurrent thoughts of death or suicide? |

Other explanations for these symptoms may need to be considered.

Adapted from *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders*. Fourth Edition. Washington, DC. American Psychiatric Association: 1994.

Program. The LAP will help you get an evaluation to determine exactly what kind of depression you may be suffering from and what level of treatment and intervention is most appropriate to help you. This consultation is completely confidential.

2. Seeing a counselor who specializes in helping lawyers deal with depression is an excellent step. Your Lawyer Assistance Program can help you find the right counselor. Lawyers tend to be prone to an overly mental analysis of their issues, and a counselor who is use to working with people with this orientation is most helpful. Cognitive behavioral therapy has been shown to be very effective in helping people with depression. But most important is that the form of treatment be designed to work well with the individual lawyer's personality type.

3. You may have to consider taking med-

ication. Survey data shows many lawyers take medication for depression. However, medication alone is not the most effective treatment and taking medication is a complex issue. The complexity of the medication question underlines the need to get good professional help in evaluating exactly what medication, if any, is needed to treat depression. Once a medication is prescribed, continual medical care is needed to evaluate how long and under what circumstances the medication should be continued.

4. In treating your depression, get involved with a modality that is most self empowering for you. In other words, do not engage in a form of treatment that continues to allow you to feel that you are the victim of the illness, or powerless to do anything about it. One of the most significant aspects of depression is a negative outlook on life.

What often happens is that someone gets engaged in a medication regime, or treatment, that simply reinforces their ability to incorporate their negative outlook into their treatment and to feel that they are a victim of their illness.

5. Exercise is one of the most vital ways to combat depression. Several control studies have shown that exercise has as good, or better, an outcome than those taking the newer forms of anti-depressant medication. Exercise seems to be the most efficient way to clear the body of the negative neurochemical effects of stress and also the most efficient way to engender the production of the healthy neurotransmitters in the brain necessary for feeling good.

6. Recent research has shown that spiritual practices are extremely helpful in addressing depression issues. These are not necessarily *religious* practices, though they might be. Practices of mindfulness, meditation, centering prayer, and similar practices, have been shown for some people to be precisely what is needed. Because depression brings with it a negative outlook on life, and spiritual practices help engender more positive outlooks, people with depression who engage in spiritual practices see how they self-create their negative outlook. This awareness, in turn, helps them learn how to become free of negative moods.

7. Join a support group. Your Lawyer Assistance Program has a number of support groups state wide including some specifically designed for lawyers suffering from depression. There are other groups, such as Depression Anonymous, that are available in some communities. In hearing the stories of others and sharing honestly one's own experiences, the negative depressive outlook can begin to dissolve and a broader perspective on life may become more natural.

8. There are lots of good books that are available to help us understand depression. The difficulty is that simply reading the book and having some intellectual understanding about depression is normally not going to help. The insights from a book need to be combined with taking action. One of the best known is Dr. David Burns' *The Feeling Good Handbook*. It provides a number of exercises that can be extremely helpful. My experience is that people who suffer from depression usually do not have the energy to actually do the exercises on their own. So, at the very least, you will need an

accountability partner—somebody who can work through the workbook with you.

9. Get back in touch with what is really exciting to you in your life and brings you joy. For so many lawyers, we get involved in working hard to establish successful practices, or to become partners in our firms. Even if we experience law as a real calling, we may simply neglect other activities in our life which we find joyful and fun. One of the hallmarks of depression is the inability to feel happiness or joy. Often we lead lives where we experience this symptom by default because we simply neglect those activities that we most enjoy.

10. The failure to have good nutritional habits can increase the opportunity for depression. If we regularly skip breakfast or with simply consume cereal and coffee (carbohydrates and caffeine) we are much more likely to experience the ups and downs in our metabolism during the morning which may lead to mood swings. If we eat a healthy breakfast with protein, and a healthy lunch, we are much more likely to have a more stable metabolism which will allow for greater mood stability. This will also give us more energy for

our day's work. One of the symptoms of depression is a lack of energy. Many people have found that diets without caffeine or sugar significantly help their mood.

11. Good sleep hygiene is essential for good mental health. We have four stages of sleep. The last stage is the one that is most restful and helps restore the healthy neurotransmitters in our brain which give us a good positive mental outlook. If we are not sleeping well we increase the chances of depression symptoms. There are doctors who specialize now in just addressing sleep disorders. Getting good treatment to improve sleep may totally remove all symptoms of depression.

Good basic sleep hygiene includes going to bed at the same time each night and getting up at the same time in the morning. Avoid watching television, using the computer, or doing anything stressful the last hour before going to bed. While sleep medication can be very helpful if one has gotten into a place of severe sleep dysfunction, many prescription sleep medications are addictive and can cause problems in the long term. In addition, many sleep medications will also often prevent a full and restorative fourth stage of sleep.

12. Good dental hygiene. This may seem a curious topic under depression. I would have certainly thought so before I understood the relationship between inflammations in the body and the triggering of the body's immune defenses. If there is chronic gum disease or untreated tooth abscess that needs a root canal, these conditions will trigger the body's immune system. We experience the body's immune system response the same way we experience depression. The body is giving the signal for us to be lethargic and unmotivated so we can rest and get over the inflammation. The failure to have good oral hygiene can often lead to feeling depressed.

Other medical conditions that give rise to chronic inflammations can also, by the same process, cause us to experience symptoms of depression. Particularly noteworthy are allergies which trigger the immune system response. This is probably the reason that suicides are most common in the spring and the fall during allergy seasons. Bottom line, any inflammation process in the body should be treated promptly and effectively to avoid the immune system creating the symptoms of depression. ■



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Race in Carolina

BY CHRIS GEIS

Raleigh, NC
May 1995

THERE WAS JUST one light on in the capitol when Austin Snyder picked up the phone and made the call.

The light came from a banker's lamp, and its small, confined light barely revealed the black face of the other man in the shadows of the room—the face that would change the South and its politics.

Though it was close to midnight, Governor Snyder wanted to talk just one more time with his most trusted political sounding board about tomorrow and the biggest news in the history of modern North Carolina politics.

The governor, a white, wealthy, good-looking man with, most thought, his future success assured and unlimited, was about to make an announcement breathtaking in its audacity and risk. He would name his best friend, Nathaniel Hampton, the black man sitting across from him, to fill a vacancy and serve as the next United States senator from North Carolina. No black son or daughter of the South had sat in one of its Senate seats since Union troops packed their bags and departed after Reconstruction, and none had ever served as a senator from North Carolina.

The governor stroked his loosened silk tie—it was a blue-and-red-striped repp model, the *de rigueur* of his trade—and leaned back in his chair. He winked at Nat, who was expressionless and sipping Scotch on the rocks. After four rings, Ozzie Miller answered the phone on the other end in his gruff mountain accent, and his voice enlivened when he heard Austin's voice.

"Mr. Speaker, how ya doing?" Austin said with his usual enthusiasm.

"Fine, son, just fine," Ozzie said, clearing his throat of gravel, whiskey, and cigar

smoke. "How's that senator of yours?"

"He's great, sir. Sitting right here, as a matter of fact, drinking your booze."

"Well, make sure he don't run out, Governor. And put that ol' boy on speaker, doggone it."

"Yes, sir, Mr. Speaker."

Austin placed the phone down and punched a button, and Ozzie's 70-year-old voice filled the room.

"Hello, Nat. Glad I finally got a chance to talk to you today, son. I see you're starting to keep the governor's hours."

"Yes, Ozzie. That's a bad sign, isn't it?"

Nat said. Nat's voice was deep and reserved. There was no accent, but it was an unmistakably black voice, and one of authority.

"No, son, it just means you've realized the best time of the day to get two important things done—drinking and deal-cutting," Ozzie said. "Welcome to the fraternity."

"All a body needs is four hours of sleep a night anyway," Austin interjected.

"Oz, I'm not so sure I want to be a fraternity bro," Nat said.

"What do you mean, son? Are you nervous?" Ozzie said. "Let me tell you, there ain't a thing to worry about. We got it all covered. Besides, this is nothing compared to what I know you been through, and Austin too, in Vietnam," a word for which Ozzie used three syllables. "Believe me, son, I know. I was a gunner's mate on a destroyer in the big one, and we had some rough times battling the Japs. Compared to that, son, everything's peaches and cream. You can handle it."

"Thanks, Oz."

"Now I'll see you bright and early tomorrow. Drink up—don't let Austin keep the good stuff from you—and get a good night's rest. Say, boys, has the press sniffed this thing out yet?"

"Yes, sir, Mr. Speaker," Austin said. "My buddy at the Charlotte paper called me ear-

The Results Are In!

This year the Publications Committee of the State Bar sponsored its Seventh Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of six committee members. The submission that earned first prize is published in this edition of the *Journal*.

lier, and they're going to have a short story about it in the morning. They'll probably put it on the wires tonight, so I imagine it'll be on the radio and in some of the other papers in the morning."

"Well, good," Ozzie said. "That ought to get the Republicans more excited than turkeys the day before Thanksgiving. They won't know what to do with themselves."

Ozzie Miller had served 35 years in the North Carolina Legislature and he had been speaker of the House of Representatives for five terms, and Governor Austin Snyder's decision to appoint Nat Hampton to the US Senate was the boldest political move he had ever seen. He wasn't sure if it would work, but at his age he was tired of caution.

"Boys, I tell you, I'm so excited I'm about to wet the floor," he said.

Austin and Nat laughed like school boys. Ozzie said they could talk later, and he hung up.

For a moment, the office was quiet, and the best friends eyed each other with slight smiles on their faces.

"So now you're starting to look happy," Austin said. "You're happy, right?"

Nat rolled his eyes and looked away. He got up from his chair and walked to the wet bar in the corner of the room, where he refreshed his drink. He looked back to

Austin's brown walnut desk and then pulled another cold bottle of beer from the small fridge and handed it to Austin.

"I haven't been happy in 15 years, Aust. Maybe 25. But Ozzie does amuse me. I hate to use a cliché, but he's really the salt of the earth. And he's the only guy I know who wears Brooks Brothers suits and chews Red Man, sometimes at the same time."

"He's just an old populist who likes stirring things up from inside," Austin replied in between draining his beer. "And you know how much he likes you. He thinks you'll be good."

"A populist. That's what they call you if you're a liberal white man from the mountains. Everybody's got a label. What am I?"

"You're a sullen, overly-serious, too-conservative black guy with a chip on his shoulder and a weakness for the bottle—who also happens to be the best friend I've ever had and who will be a great United States senator from North Carolina."

Nat let a small grin slip across his face again and drained his glass.

"Why are you doing this, Austin?" His gaze was fixed on the Depression-era buildings across the street, visible in the still darkness of Raleigh over Austin's left shoulder.

"Relax, man. Let's have a cigar."

"No thanks. Those things are bad for your health."

"And I suppose that glass is a nipple of mother's milk?"

"It hasn't hurt me so far. Even with one and a half legs, I can still kick your butt in basketball, softball, and golf."

"One and three-quarters legs. And I'm a better tennis player."

"Tennis is a sissy sport. Didn't have a country club in my 'hood anyway."

"Just a golf course, though, right?"

The governor's office was silent again except for the stirring of ice cubes in Nat's glass. Austin opened his desk drawer and pulled out a humidor. From it he removed two cigars. He clipped them both, and smelled one and rolled the other across the table. With a wooden match he carefully lit his, rolling it around in his mouth and puffing until it had the perfect orange glow evenly around the edges. Smoked wafted to the ceiling. He opened a window that was supposed to be permanently shut.

"What's wrong with you, Nat?" he asked in a more serious tone.

"Nothing, Aust. Nothing. I'm going to

take a walk."

Nat returned to the bar and poured another drink, then disappeared from the office. Austin sat and continued smoking quietly in the dark, cleansing his palate with a swig of cold beer every few minutes.

THE GOVERNOR'S DECISION to appoint his best friend—a black guy, no less—would startle state and national political observers and shake up state and national politics as well. For months, even years, Austin, with his keen political mind, had tried to calculate how it would play. He knew it had risks, especially to his own future, but he was pretty sure—not supremely confident, though, as he was with most matters—that he could navigate any storms and come out dry and safe. Anyway, to him there was only one decision to make. Politics, history, race, the South, his own ambitions—all had been judiciously analyzed in his mind for months on end; but, in the end, he was like a judge who had come to a case with a pre-determined verdict and just wanted to be prepared for the effects his ruling would unleash. He would appoint Nat regardless.

He was going to unleash this bomb on North Carolina, on the South, on the nation. He just wanted to know what it would take with it when it exploded. Maybe him?

For months Austin had huddled secretly with a small circle of his trusted political advisers, including Ozzie, who knew which way the political winds were blowing in every corner of the state. His advisers mostly offered caution, except for Ozzie, who appealed to Austin's place in history and to his religious faith. With a single stroke of the pen, Austin Snyder, governor of the great state of North Carolina, would send tumbling down a century-old fortress of white political supremacy in the Old Confederacy, and Ozzie played this tune in Austin's ear regularly. Austin disregarded the fact that Ozzie was from the mountains, where there were few blacks and where more than a few people had fought for the Union or at least not with the Confederates.

Unbeknownst to Ozzie and others, however, Austin had long ago made up his mind—years and even decades ago. This was a decision that he believed, arrogantly enough, that he was born to make.

NATHANIEL HAMPTON AND

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Austin Snyder had been best friends since meeting on Austin's uncle's tobacco farm in Stokes County, north of Winston-Salem, one hot summer day in 1961. They were both from the city, but they spent much of the succeeding summers together on the farm, harvesting the crop and playing and fishing in the Sauratown Mountains.

When Winston-Salem began to quicken the pace of desegregation in the mid-1960s, they went to school together and eventually played on the same football, basketball, and baseball teams at R. J. Reynolds High School. Each had the rare blessing of being wholly devoid of racial prejudice, and each recognized it in the other immediately. They shared an admiration for John F. Kennedy and dreamed of making it big in politics or the law. Austin would be governor and maybe president, and Nathaniel would be the first black US Supreme Court justice.

They agreed to stay at home and attended Wake Forest University together. When they graduated four years later, facing the prospect of the draft, they both signed up for the marine corps and attended officer candidate school in Quantico, Virginia. Soon after being commissioned they were training to lead infantry platoons in combat.

Off both went to Vietnam, where they arranged to serve in the same infantry battalion. Austin returned alive only because Nat saved his life. Nat, too, returned alive, but without part of his right leg, which he left behind in a rice paddy.

There wasn't a day that went by that Austin didn't think about that sunny afternoon in Vietnam. He had a beautiful wife and three great children, and he loved his friend as much as anyone. And now he was going to make him a United States senator.

NATHANIEL HAMPTON, THE soon-to-be next senator from North Carolina, was sitting alone astride an old Confederate cannon on the edge of the capitol lawn, facing west to Hillsborough

Street in downtown Raleigh. It was after midnight. His purple-and-gold tie loosened, white shirt sleeves rolled to the elbow, he looked comfortable. Yet he felt like a jockey on a wild horse that was about ready to burst out of the stable. The moon was full, the air warm and still, and he was sweating.

"You know they used those things to protect the Capitol from the Union Army," Austin said, sneaking up on the less-than-sober soon-to-be junior senator. Capitol police officers and state troopers in plain-clothes watched observantly from windows, about 40 yards away.

"Guess they didn't work too well, bro," Nat said.

"Are you posing for a picture in *Irony* magazine?"

"You mean *Ebony*, Governor. As in ebony and ivory."

"No, I mean *Irony*. Because everyone knows you don't wear a tie when you're manning a crew-served weapon. Seems like I read that in a book about naval warfare somewhere. Just ask Ozzie about his old days on a destroyer."

"Oh, I get it. You weren't referring to the irony of a black man astride a cannon designed to protect the South from what we will announce on this very spot tomorrow—the assumption of southern political power by the dark race."

"I don't think you qualify for the dark race, Nat. First of all, you're way too light skinned—and whew, thank God for that, because just a hint more chocolate in you and, well, frankly, I couldn't have appointed you. As it is now, everybody's just going to think you're another white guy with a head start on his summer tan."

"I was speaking metaphorically, Aust."

"Then I think my race would be adequately described as the dark race. We have a long resume distinguished with hundreds of years of ignorance, oppression, and violence."

Nat rolled the last of his drink around his glass until it was only ice cubes, and he stared off into the quiet downtown.

"So what happens when October and November come, and my tan still hasn't worn off and I'm kissing babies whiter than Wonder Bread at rallies in Charlotte?"

"We blame it on year-round tanning products, and white people's desire to look and be like black people."

"Glad you got this planned out, Gov. 'Cause it's going to get interesting, that's for sure. In fact, that's the only reason I agreed to do this, just to be along for the ride and watch it unfold. 'Course, next year I might say it would be a hell of a lot more interesting if I wasn't in the middle of it. Someone let the help in, and the help's about to become senator. The Union blue boys might as well have walked past these canons as if they were toys for all the good they did. Why else did we all fight? The help is going to be running the show now. That's a body blow to the Confederacy if I ever saw one."

"The Confederacy's been dead for 130 years."

"Then why are we still flying those flags, bro?"

"Guess some people haven't gotten the word, kind of like those Japanese soldiers they found on the islands years after the war in the Pacific. We'll get the word to them with this. Anyway, it enlivens me to know you've somehow found some purpose in life, or at least in this matter. You're an observer of your own history-making actions."

"Yeah, it'll kind of be like being half-dead, standing outside your body, and watching priests and friends give you last rites and pray over you. I've had that experience before, you know. Anyway, they're *your* history-making actions. I'm just along for the ride, as I said."

"Why aren't you happy with this?"

"Why does anyone have to be happy? Is it necessary to sustain life? What's this happiness crap you've been on for the last 20 years, man? Let it go. Just strive for being content, being in the moment."

"Ooh-rah," Austin mumbled sarcastically, pulling out the Marine jargon.

It was a conversation they had had before, and just like all the other replays it went down the same path.

Nat shook the ice cubes in his glass a little and looked away from Hillsborough Street and toward Austin, who was sitting on a bench near the cannon.

"In 11 hours I'm going to stand here and face a crowd of Tar Heel people and tell them I'm their new senator, and by the way, excuse me, but I'm black."

"By God, I hope those cannons are operational still. We might have a last assault of the Confederate cause on the capitol tomorrow."

"We can take 'em, Aust! Ooh-rah! By God, we can take 'em!"

He chucked the cubes into the bushes, and Austin helped him down. He had looked thoroughly ridiculous and loved it. He put his arms around his buddy and they walked back to the governor's office.

A FEW MINUTES LATER, back in the office, Nat called Ozzie back and got his own version of the history of North Carolina politics and the effect Nat's appointment would have on the state. Austin became the bartender as Nat listened, laughed, and learned from the great one. Ozzie explained how the Democratic Party in North Carolina had evolved from a party of white supremacists and segregationists after the Civil War to one of moderation and progressivism during the depression and after World War II.

Ozzie said that it was not unheard of for governors to appoint senators midway through a term. This usually happened because of a death, but sometimes because of the resignation by the senator originally elected to the six-year term. The governor could appoint someone to fill the spot temporarily, and an election to fill out the remainder of the term would be held on the next general election date. In this case, that would be a year and a half away, in November 1996.

The drinking and conversation continued past midnight. Occasionally, Ozzie would be put on speaker phone as his young lads Austin and Nathaniel figuratively sat by his side and learned about the evolution of North Carolina and his beloved Democratic Party. When Ozzie started to fade around the 1950s, Nat broke in on the history lesson and provided a few lessons of his own. After they got to 1965, Ozzie said he had to hit the head, and Nat told Ozzie to go to bed so he could make it downtown on time in the morning. Austin called the commander of the state Highway Patrol and asked him to have a cruiser at Ozzie's door at 0800 hours.

Nat's emotions were buoyed by the drinking and the conversations with Ozzie. Austin's uncle and Ozzie had been seatmates in the state House for a few terms in the late 1960s and early 1970s, and Ozzie, like so many other powerful Democratic politicians in North Carolina, had taken a liking to the up-and-coming Snyder early on.

But Ozzie also had slowly but surely developed a tight bond with Nat. Partly it was due to both men's curiosity. As a mountain politician, Ozzie had never really dealt with black folks on a sustained basis and he found Nat intriguing, real, and disarmingly charming. As a mountain native, born in an age when few neighbors ever left their hollow, let alone their county, Ozzie also had a human need for a black man's approval and friendship. Nat fit the bill not only because of his intelligence, but also because he had come of age in a time when he neither had to be subservient nor especially suspicious of older white men.

As for Nat, his friendship with Ozzie fulfilled his personal need to learn as much as possible about what made older white southern men tick, and he was also awed by Ozzie's intelligence. Ozzie had dropped out of high school to fight in World War II, and he was a battle-scarred navy veteran who had served in the South Pacific. When the war ended he returned to school and eventually got his law degree. He could quote Shakespeare, the Constitution, and the Bible in the same paragraph. He was also gracious and gentlemanly in a sincere way that Nat immediately loved, and he shared Nat's taste for cigars and drink.

Ozzie had his own agenda, to be sure. He wanted to build up the rural areas of the state, especially the poor mountains from which he came, and he would shovel as much money as possible to those areas to do it. But he had put most of his agenda aside for the sake of Governor Snyder. He thought Austin was capable of great things, and perhaps would be president, and he had helped him get command of the legislature and put his programs through. Now he was about to do the same for Senator Hampton.

"If we can get those wine-and-cheese Yankee Republicans in Charlotte and Raleigh to back you son, you'll be a shoe-in," Ozzie told Nat. "They don't know squat about the history of our state, but they hold the fate of her political history in their soft, money-grubbing hands, although they don't know that, either."

Nat thanked him and ended the conversation by promising to appear with Ozzie at his county apple festival in the fall.

"You just make sure there's nothing in that cider I can't handle," he said, already half drunk.

He reached into Austin's desk and pulled

a cigar from the humidor, lit it, and puffed away. The office of the governor of North Carolina would stink like a pool hall in the morning.

"I was just thinking," Austin said with a mischievous grin. "Should we call Barker and wake him up with the news?"

Wide smiles broke out on their faces.

"Nah," Nat said. "Tonight's probably the one night a month he's doing it with his wife, and it would totally ruin his ability for the next year or so. I don't really like the old codger, but I don't dislike him that much."

HAROLD BARKER WOULD be the new Senator Hampton's colleague from North Carolina in the United States Senate. Seventy-four years old and a staunchly conservative Republican, Barker had been a Democrat when he was appointed to the Senate by then-Governor Vance Theodore in 1962 as a political payoff for helping Theodore win election two years prior.

But the day after Lyndon Johnson signed the Civil Rights Act of 1964, Barker drove to North Carolina, switched his party affiliation, and returned to Washington to phone home-state reporters and tell them they might want to check the registration books in Rocky Mount, his hometown. Ever since, he had been a thorn in the side of liberal and moderate Democrats in Raleigh and Washington. Austin thought he was the most racist politician he had ever seen, and he hated Barker with a passion. The feeling was mutual.

Nat, however, had a different take on Barker, viewing him more as a product of his time who just became more stubborn as he aged and the world changed too quickly for him. Sure, Nat knew that Barker would do what it took to win, and that included race baiting if necessary. But Nat thought few people at the core were truly racist. Nat loved giving the state the delicious irony of serving alongside Barker, but he thought Barker would like him personally.

The seeds of the appointment had been sown three years earlier, in 1992, when Austin was winning his second term as governor. The aging Theodore, who had by then succeeded to the Senate, discreetly told Austin that he would serve only half his term. It would be up to Austin to appoint a replacement. Austin quietly floated the idea of a black appointee to Theodore, and Theodore's eyes lit up with excitement at the

idea. Theodore was by no means a left-wing liberal on matters of race, but he had long ago decided that racial prejudice was simply holding back society's progress and so people needed to move on from the issue. He had been burned a time or two by the race-baiting that Barker's crowd used when it suited Barker's political needs. Barker was still Theodore's oldest political rival, and such an appointment would stick in Barker's craw, so Theodore was all for it.

"Theodore told me that Barker might up and have a heart attack on the Senate floor once he sees you walk in," Austin said between puffs on his last cigar of the evening. "Said it'd be the greatest thing to happen to North Carolina since we signed the Bill of Rights. We were the first to sign it, you know—First in Freedom." The phrase, oddly, once graced North Carolina's license plates.

"Yes, I know. My family has always treasured that heritage of our state," Nat replied.

"I'm sure they'll be proud tomorrow." Austin guzzled the remains of his last beer and put the cigar out. "Let's go."

With that they hit the lights in the governor's office, walked out the side door of the capitol, and headed across the lawn to the governor's mansion a few blocks away. The governor's security detail of plainclothes state troopers followed 50 yards back. Austin was close with the troopers, but they gave him his space when he needed it.

"Say," Nat said, putting his arms around Austin as they walked through the warm spring night. "How about this for license plates: 'North Carolina—First in Black Senators.'"

"I love it. I can see it on Barker's car now. But, uh, we'll have to change that to 'African-American.'"

"Nah," Nat said. "We'd have a special tag just for Barker: 'First in Negro Senators.'"

They laughed like bar drunks walking out after last call, and their silliness continued and filled the air of deserted downtown Raleigh. Tomorrow, they would make some real noise. And the country would be listening. ■

Chris Geis is an attorney for Womble Carlyle Sandridge & Rice in Winston-Salem and holds the rank of lieutenant commander in the US Navy Reserve. This piece is dedicated to Caroline, who motivated him to keep writing over a long, cold winter.

IOLTA Implements Comparability

Income

NC IOLTA suffered an unprecedented downturn in income in 2009. Total income was under \$2.4 million—a 55% decrease from the previous year. The income downturn continues in 2010. First quarter income was down by 43% over the same period in 2009. The income decreases result from the economic downturn, which has seen unprecedented low interest rates being paid on lower principal balances in the accounts.

Grants

Only by using \$1 million in reserve funds was NC IOLTA able to allocate just over \$3 million in 2010 grants (compared to \$4.1 million in 2009). Grants were restricted to a core group of grantees at the forefront of access to justice work. Even so, grants to legal aid organizations were decreased by approximately 20%. No grants were made to new organizations or for new programs, and 2010 grants were not made to a number of organizations that have received funds in the past for administration of justice programs.

State Funds

In addition to its own funds, NC IOLTA administers state funding for legal aid on behalf of the State Bar. During calendar year 2009, just under \$5.8 million was distributed, compared to \$6.4 million in 2008. The Equal Access to Justice Commission, the NCBA, and the Equal Justice Alliance are continuing to work to restore and increase legal aid funding to meet the increased needs for legal aid during the economic downturn. However, the appropriation funding for legal aid was cut 5% for 2010-11 due to the state budget crisis.

NC IOLTA Trustees and Leadership

At their long range planning/orientation board meeting in September, the NC IOLTA trustees will welcome three new IOLTA trustees appointed by the State Bar Council to begin three-year terms on September 1, 2010. The council appointed James G. Exum Jr., former justice (1974-86) and chief justice (1986-

94) of the NC Supreme Court, who is in private practice in Greensboro; Charles E. Burgin, former president of the NC Bar Association (1993-94), who is in private practice in Marion; and Janice M. Cole, who is in private practice in Hertford after having served as US attorney for the eastern district (1994-2001) and as a district court judge (1990-94). Robert G. Baynes was appointed chair and Brenda B. Becton was named vice-chair of the NC IOLTA Board of Trustees for 2010-2011.

Comparability Implemented

On January 28, 2010, the NC Supreme Court approved revisions to the NC IOLTA rules that require lawyers to hold their IOLTA accounts only at “eligible” banks—those banks that agree to pay IOLTA accounts the highest rate available to that bank’s other customers when the IOLTA accounts meet the same minimum balance or other account qualifications (known as “comparability”). The revised rule became effective on July 1, 2010. After this date, lawyers may keep NC IOLTA accounts only in banks certified as eligible by NC IOLTA.

NC IOLTA worked with banks to implement the requirement and ensure compliance. Banks were certified as “eligible” by NC IOLTA upon a finding that they are in compliance with the rule based on the documentation they submitted to the program. NC IOLTA is maintaining a list of just over 100 eligible banks on the NC IOLTA website. NC

IOLTA is pleased that all banks that previously participated in IOLTA have been certified as Eligible Banks under the new requirements. Three banks without IOLTA accounts sought and received certification so that they can offer IOLTA accounts. Our banking consultant’s analysis projects that the program could receive just over \$1 million annually in additional income from the changes even in this difficult economy and that the program will see more significant increases when interest rates rise.

NC IOLTA Prime Partners. Banks that go above and beyond the eligibility requirements of the revised rule to support the NC IOLTA program in its mission to ensure that low-income North Carolinians have access to critically needed legal aid are recognized as NC IOLTA’s Prime Partner Banks. The required interest rate for Prime Partner Banks is a net yield of 75% of the Federal Funds target rate with a minimum rate of 0.75%. We are very pleased to report that over 20% of our banks have chosen to be Prime Partners with NC IOLTA. Those banks are specially recognized on the Eligible Bank List (www.nciolta.org/iolta_banklist.html).

We hope North Carolina attorneys will be supportive of Prime Partner Banks.

■ If you are opening a new IOLTA account, choose a Prime Partner Bank and let your bankers know how much you appreciate their support of the program.

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IOLTA Prime Partner Banks

Asheville Savings Bank
Bank of Currituck
Bank of North Carolina
Bank of Oak Ridge
BlueHarbor Bank
First Federal Savings Bank of Lincolnton
Forest Commercial Bank
Heritage Bank
HomeTrust Bank
KeySource Bank

LifeStore Bank
Macon Bank
Nantahala Bank
NewBridge Bank
New Dominion Bank
Old Town Bank
Patriot State Bank
Providence Bank
Roxboro Savings Bank
Taylorsville Savings Bank
Vantage South Bank
Waccamaw Bank

You Can Have Too Many Friends

BY SUZANNE LEVER

Many lawyers and other legal professionals use social networking websites to advertise their legal practice, connect with like-minded people, post “adorable” family photos, or locate long lost boyfriends—I mean *friends*. Some of the better-known sites include MySpace, Facebook, LinkedIn, and Twitter. (I am including Twitter in the list because it is well-known. In the interest of full disclosure I need to report that, to the best of my knowledge and recollection, I have never “tweeted,” “twooted,” or “twitted” anything.) Essentially, social networking sites allow users to create personal profiles and then interact with “friends” through “chatting”¹ or “blogging.”² While social networking sites can be useful, entertaining, and addictive, legal professionals need to be cognizant of potential ethical pitfalls attendant to revealing, and discovering, information on a social website.

Several opinions have recently been issued addressing the propriety of judges participating in social networking websites. For example, the North Carolina Judicial Standards Commission reprimanded a judge for “friending” a lawyer involved in a hearing before him and using Facebook to discuss the case with the lawyer. The judge also “googled” one of the parties and accessed the party’s website. *See* N.C. Judicial Standards Comm., Inquiry No. 08-234 (April 1, 2009). The commission found that the *ex parte* communications and the independent gathering of information indicated a disregard of the principles of judicial conduct and constituted conduct prejudicial to the administration of justice.

To prevent such occurrences, the Judicial Ethics Advisory Committee of the Florida Supreme Court issued an opinion prohibiting judges from adding lawyers who may appear before the judge as “friends” and vice versa. *Fla. Judicial Ethics Advisory Comm., Op. 2009-20*. The reason for the ban is to prevent the appearance to the public that “friended” lawyers might have a special influence over the

judge. Kentucky, New York, and South Carolina have issued opinions allowing judges to participate in social networking websites, but advising judges to be extremely cautious that such participation does not otherwise result in violations of the rules governing judicial conduct. Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Op. JE-119 (2010); NY State Advisory Committee on Judicial Ethics, Op. 08-176 (2009); SC Judicial Department Advisory Committee, Op. 17-2009 (2009).

It is not just judges who have to be wary of their online activity. The Philadelphia Bar Association’s Professional Guidance Committee issued an opinion concerning a lawyer’s proposed investigation of a witness’s Facebook and MySpace pages. *Phila. Bar Assoc. Prof’l. Guidance Comm., Opinion 2009-2* (March 2009). The lawyer wanted to ask a third party to use the Facebook and MySpace websites to send a “friend request” to the witness. The lawyer believed that the third party would be able to uncover information on the websites that could be used to impeach the witness. The committee concluded that the proposed method of obtaining information was deceptive and in violation of the Pennsylvania Rules of Professional Conduct.

Lawyers have also been cautioned as to their participation in online lawyer rating sites. The South Carolina Bar Association responded to an inquiry about a lawyer’s professional responsibilities when a company launched a website that listed lawyers without the lawyers’ permission or involvement. *SC Ethics Advisory Comm., Opinion 09-10* (2009). The company used information obtained from state courts and bar associations to create website entries for lawyers. For each lawyer listed, the website included a company “rating.” The website also included a feature for peer endorsements and client ratings. The South Carolina Bar Association held that if the lawyer participated in the listing by “claiming” or “updating” his listing, all com-

ments made about him on the website were subject to the advertising requirements of the South Carolina Rules of Professional Conduct and the lawyer would have an ongoing duty to monitor the listing to keep all comments in conformity with the rules.

And in the category of “what were they thinking?” we have the following two scenarios involving lawyers online. In Texas, a lawyer asked for a continuance from a judge due to the death of her father, but was later sanctioned by the judge when it was discovered that the lawyer’s Facebook profile page detailed a week of drinking and partying. Also, the Florida State Bar fined a trial lawyer \$1,250 for criticizing a judge on a blog. The lawyer questioned the judge’s mental stability and stated that she was unfit for her position. The lawyer also stated that the judge had an “ugly, condescending attitude” and was an “evil, unfair witch.” Ouch! The Florida Supreme Court upheld the sanction. *996 So. 2d 213* (2008).

Law students are not immune from scrutiny either. The Florida Board of Bar Examiners adopted a policy of reviewing applicants’ social networking sites as a part of its character and fitness investigations. Facebook review is limited to certain applicants such as those who need rehabilitation or who have admitted to past indiscretions.

Remember that if you are using a social networking or online rating website to market your law firm, you have to follow all of the advertising rules. *See* RPC 239. For example, in response to social networking profiles that ask users to list their “specialties,” you cannot state that you are a “specialist” in a particular field of law, except as allowed by Rule 7.4(b). In addition, you need to be careful not to violate Rule 7.3, the anti-solicitation rule, which regulates real-time communications with prospective clients. Interestingly, the Philadelphia Bar Association just issued an opinion that allows certain

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Profiles in Specialization—Bailey Liipfert

AN INTERVIEW BY DENISE MULLEN, ASSISTANT DIRECTOR OF LEGAL SPECIALIZATION

I recently had an opportunity to talk with Bailey Liipfert III, a board certified specialist practicing in Winston-Salem. Bailey received his undergraduate degree in Soviet Area Studies and Russian Literature from the University of North Carolina at Chapel Hill, and his law degree from Campbell Law School. Following graduation, he joined the firm now named Craig Brawley Liipfert and Walker LLP in Winston-Salem to focus on estate planning and probate law. Bailey was among the first to achieve the distinction of Certified Elder Law Attorney from the National Elder Law Foundation (NELF). He added the North Carolina State Bar certification in elder law in 2009, the first year it was available. Following are some of his comments about certification and the impact it has had on his career.



Q: Why did you pursue certification?

When I first started at Craig Brawley, I was the low man on the totem pole, and as such, I was often asked to research the questions that didn't have easy answers. It was a great opportunity to learn about many issues associated with estate planning law, including nursing home problems and disability concerns. I signed up for a continuing legal education seminar in Washington, DC, about advanced medical directives. Susan Haines was the speaker and it was enlightening to realize that there was a lot that could be done for our clients in these situations. That shaped my practice to the point that I was really focused on elder law. I sat for the NELF certification exam as soon as I was eligible.

Q: How did you prepare for the exam?

I completed an NELF exam preparation course and continued to study the materials after the course was over. I got West's

ElderLaw: Advocacy for the Aging and read that as well. I felt that the exam covered what I was dealing with on a daily basis: there was nothing I wasn't expecting. I thought it was interesting that right before the exam I had clients come in with issues I hadn't dealt with before, including veterans benefits. I was pleased to see that those issues were part of the exam.

Q: Was the certification process valuable to you in any way?

Since I completed the exam through NELF before the NC State Bar offered a specialty in elder law, I actually took the exam before completing the other requirements. The NELF application requires a pretty comprehensive listing of the types of matters that I handled in the previous few years. As I prepared that, I realized something about the shape of my practice that I hadn't noticed before. Housing issues are at the heart of every engagement I have. Clients don't want to end

up living in a nursing home—that's the goal in just about every case. The decisions that each of us make as we get older impact our risk for avoiding a nursing home. Having a willingness to downsize or move closer to a good support system are both examples of ways we can reduce our risk.

Q: How has certification been helpful to your practice?

I definitely receive more referrals due to being a board certified specialist. Becoming a specialist shows others that I have made a commitment to this practice area. I think that gives other lawyers a greater degree of confidence in making a referral, particularly if they don't know me personally.

Q: What do your clients say about your certification?

Some clients are aware, more lawyers are

CONTINUED ON PAGE 37

A Haven in Our Troubled World

BY ANNETTE G. CHURCH

What joy I have found in providing a telephone number to someone. This number is an extraordinary one. I have seen a call to this single telephone number change the course of an individual's life, their health, and their outlook.

It is the telephone number of The Charlotte Volunteers in Medicine Clinic, a haven in our troubled world. This is a place where medical services are provided without cost to those lacking the ability to pay and who are uninsured.

Often my life intersects with individuals who are without health insurance benefits; with those who have lost hope of being able to obtain medical care and, alarmingly, are often in pressing need of medical attention. As a Social Security disability paralegal, I have opportunities to assist clients at various levels of disability. Many enter into our firm with a cloud of dejection hovering around them. One of the most frequent questions I hear is, "How can I see a doctor without any money to pay for one?" This is when I am often able to experience the joy I mentioned earlier, by sharing information with them about the Charlotte Volunteers in Medicine Clinic.

My connection with CVIM came out of desperation for those in need of medical care. I went to Google and found them there. After a telephone call to their office, it was my hope that CVIM was what their website declared.

CVIM has two objectives: to improve access to primary care for minorities and the poor, and to develop individual health and wellness programs through patient education.

Some of the services provided include:

- Blood pressure screenings
- Prostate cancer screenings
- Individuated health and wellness programs
- Preventative care
- Counseling
- Primary care for adults ages 18-64
- Management of diabetes and other chronic illnesses
- Referral services for specialty care.

CVIM treats their patients in a timely manner. Those with special needs are referred to appropriate medical providers and not forgotten. Have you ever been forgotten? It is painful. Illness and poverty multiplies such an unnecessary indignity.

After more than ten of our clients described their experiences with CVIM as receiving quality medical care and being welcomed with dignity, my hope was replaced with belief. The accounts remain consistent.

CVIM was founded by certified physician's assistant Donna Murray Lacey, who now serves as the clinic's director. The beginning of the clinic took years of labor-intensive work. In a March 2009 interview Murray Lacey stated, "The early days were testy. The demand for the clinic was much greater than the supply..."

I spoke with Ms. Murray Lacey recently to ask her about the specific needs of the CVIM. "Our grants and donations are down. We lost \$190,000 with the loss of a \$30,000 grant and \$160,000 by being cut from Mecklenburg County's budget."

I heard the surprise in Murray Lacey's voice when I called her and pointedly asked about CVIM's greatest needs. CVIM has a waiting list of patients. However, they also have a waiting list of volunteers! They need funding both for training the volunteers and for patient care. As each new day adds hundreds upon hundreds of our fellow North Carolinians to the life-altering struggle of being without health insurance, patient lists at places such as CVIM will continue to swell.

CVIM is a nonprofit organization that our state and community must not ignore. Our arms should wrap around it. Why? It is taking care of our neighbors and our relatives who are in the greatest need—within the 200% poverty level or less and uninsured. They serve because the need is there.

It was a pediatrician, Dr. Jack McConnell, who began this tradition of volunteering that is now contagious. A resident of Hilton Head Island, SC, he could not dismiss a recurring and troubling concern. He wondered where his fellow islanders, so many of whom were liv-

ing in poverty, were obtaining medical care. Dr. McConnell's burden became his vision. He shared it with retired doctors, nurses, dentists and other professionals. He wanted them to volunteer to provide free care to the underserved people of their community.

In February 1993 the first Volunteers in Medicine clinic was opened in Hilton Head Island, SC. Today it is an example for more than 70 other clinics throughout the US and their vision statement remains the same:

"May we have eyes to see those rendered invisible and excluded, open arms and hearts to reach out and include them, healing hands to touch their lives with love and in the process heal ourselves."

Check out Charlotte Volunteers in Medicine at www.cvimnc.org. Click onto their donations page. One dollar gifts are welcomed and \$400 provides health care for one person, including medication for a full year. Be extraordinary.

Do you know someone who is struggling financially and without health insurance? There are 12 Volunteers in Medicine Clinics throughout North Carolina doing amazing work.

Does your community have a need for a free medical clinic? If so, I encourage you to visit Volunteers in Medicine at www.volunteersinmedicine.org/starting to learn more about this bold endeavor which is healing our country "one community at a time." ■

Annette Church is a Social Security paralegal at Ted A. Greve and Associates, PA, in Charlotte. She is also a columnist for Carolina Paralegal News.

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Lawyers Mutual for sponsoring the entertainment for dinner.

Bruno's Top Tips for Tip Top Trust Accounting

BY BRUNO DEMOILLI

Reconcile Yourself to Reconciliations

I performed random audits of trust accounts in the 9A Judicial District (Caswell and Person counties) and the 11th Judicial District (Harnett, Johnston, and Lee counties) last quarter. Of the 60 law firms I audited, 60% were not in compliance with the reconciliation requirements for trust accounts. Sadly, this is not an aberration.

Why do lawyers fail to reconcile?

Most lawyers fail to reconcile their trust accounts because they do not understand how to reconcile. Very typically of late, this lack of understanding is compounded by an overreliance on trust accounting software that readily produces a report called a "Reconciliation Summary" or a report with a name that includes the word "reconciliation." The report with the seemingly appropriate name creates a false sense of security because, although the report may confirm that the trust account total and the balance shown on the bank statement are consistent, *the report does not satisfy the quarterly reconciliation requirements.* This article sets forth the requirements of the Rules of Professional Conduct and explains how to reconcile your trust account to the bank statement.

How do you perform a monthly and a quarterly reconciliation?

The Rule 1.15-3(d) requires both quar-

terly and monthly reconciliations of the trust account balance to the current bank statement for a trust account. However, there is an important distinction between the basic reconciliation that must be done monthly and the more thorough reconciliations that must be done each quarter.

Monthly Reconciliations

Rule 1.15-3(d)(2) states that each month, "the balance of the trust account as shown on the lawyer's records shall be reconciled with the current bank statement balance of the trust account." The steps required for this type of reconciliation are not unlike those necessary to balance a personal checking account.

- From the ending balance shown on the bank statement for the monthly reporting period, subtract all outstanding checks. To this amount, add all deposits that have not cleared the bank. The resulting balance is the current bank balance.¹

- Confirm that the current bank balance equals the balance for the trust account as shown on the lawyer's records for the same date that the bank statement is balanced (if using manual accounting, this balance appears on check stubs or the account register).

Note that the "Reconciliation Summary" produced by accounting software that I reference above will typically satisfy the monthly requirement to recon-

cile the current bank balance to the total trust account balance.

Quarterly Reconciliations

Rule 1.15-3(d)(1) states that each quarter, "the individual client balances shown on the ledger of a general trust account must be totaled and reconciled with the current bank statement balance for the trust account." I have added the emphasis to demonstrate the difference between monthly and quarterly reconciliations. The quarterly reconciliations require the extra step of adding up individual balances for each client as shown on the trust account ledger and making sure that this total reconciles to the bank current balance for the month at the end of the quarter. Quarterly reconciliations promote accurate accounting for client funds by (1) ensuring that the running balances for each client, when totaled, equal the total funds on deposit in the trust account and (2) identifying any negative balances.

There is only one additional step required for quarterly reconciliations.

- Determine the current bank balance (as explained above).

- Total the current individual balances for every client as shown on the client ledgers for the trust account. Accounting software can usually produce a report that satisfies this step. Typical names for such a report include "client trust listing," "multiple balances report (balances only)," or "custom summary report."

- Confirm that the current bank balance equals the total of current client balances.

The date for balancing the bank statement and the date client balances are totaled must be the same or the account may not reconcile. If reports are generated by computer, this means that the reports must be generated on the same date. It is recommended that the reports be printed simultaneously to avoid a subsequent posting to one report and not the other, thereby affecting reconciliation.

If your trust account records are kept

Annual Meeting

You are asked to take notice that the annual meeting of the North Carolina State Bar will be held on Friday, October 29, 2010, in conjunction with the council's quarterly business meeting. Further, the council will hold an election on Thursday, October 28, 2010, at 11:45 a.m. at the Raleigh Marriott City Center, Fayetteville Street, Raleigh, to choose the agency's president-elect, vice-president, and secretary-treasurer for 2010-2011. All members of the Bar are welcome to attend these events.

manually, you may use this alternative method of reconciliation:

- Add all client balances and outstanding checks. Subtract any outstanding deposits.

- The resulting balance should reconcile with the ending balance on the bank statement.

Note that trust account quarterly reconciliation records (whether manual or computer-generated) must list each client's name and current balance, the total of all client balances, and the current bank balance (with details) for the period. All reconciliation records must be retained for six years to satisfy the recordkeeping requirement in Rule 1.15-3(d). If your software does not allow you to retrieve a hard copy

of the reconciliation report at a later date, a hard copy should be printed at the time of reconciliation.

Negative Balances

Negative balances, whether they are discovered in a client balance or in the current bank balance, must be promptly reimbursed or a written explanation (e.g., for an accounting error) must be included in the records for the trust account.

If you have questions about the reconciliation requirements for trust accounts, you can find more information in the *Attorney's Trust Account Handbook*, which is posted on the State Bar website (www.ncbar.gov) under the tab for "Programs—Trust Accounting." You may also call the ethics lawyers or me at

the State Bar (919-828-4620). ■

Endnote

1. Interest earned on a trust account is payable to the State Bar's Interest on Lawyers' Trust Accounts (IOLTA) program and, if remitted by the bank each month, does not need to be taken into consideration when determining the current bank balance. However, some banks remit the interest to IOLTA during the month after it is earned. When this occurs, the interest remitted from the prior month (as shown on the bank statement) is subtracted from the balance and the interest earned during the current month is added to the balance. Some banks remit the interest to IOLTA on a quarterly basis. This requires the interest earned during the third month of the quarter to be added to the statement balance and the interest remitted to be subtracted from the statement balance. It is recommended that an IOLTA ledger be maintained for both manual and software accounting when interest is not remitted in the same month that it is earned.

Specialization (cont.)

aware. The clients who watch television on a national basis have heard of certification and know to look for it. I also receive many referrals from financial advisors who are aware of the certification and view it as an important accomplishment. The benefit to NC adding this certification is that more people are learning about it and it's becoming easier for clients to identify a qualified lawyer to help them.

Q: How does your certification benefit your clients?

I really believe that the increased requirements for continuing legal education are tremendously helpful to my clients. I learn so much from attending seminars and even talking with others from around the state or nation about the issues they're facing. I know that there are better developed community support programs in other parts of the country. North Carolina seems very biased toward institutionalizing people, in spite of recent efforts to re-balance services.

I worked as an emergency medical technician in Orange County before attending law school and in that position worked with a large number of people with disabilities. I think that experience gave me a great deal of compassion for those with physical disabilities. In my practice now, I have a lot of clients with disabilities and I feel a special connection with them and a strong desire to provide good service and legal advice. My certification allows me to real-

ly focus on learning as much as I can about the issues specific to this practice area.

Q: Is certification important in your practice area?

Yes, the rules are so complicated and strange that you really have to dedicate yourself to this practice area in order to do a good job for your clients. Lawyers can join the National Academy of Elder Law Attorneys and begin to learn about the details of elder law. But if I need to make a referral, I look for someone who has achieved the certification. I know that a certified lawyer has experience and has passed the examination. That gives me comfort in making the referral.

Becoming a certified specialist helps the profession in general by allowing those who specialize to educate others and increase expectations and the quality of representation. We're facing some issues in elder law, including budget cuts, which will affect so many North Carolinians. Decisions that people make now can have a great impact on their options as they age. Having more lawyers who understand those issues will benefit not only the profession, but the public and the state as a whole.

Q: How do you see the future of specialization?

I expect the program to continue to grow, particularly among lawyers practicing in the more metropolitan areas. I hope that more lawyers from lower populated areas will see its value in differentiating their practice for potential clients. I could see offering more areas of certification; education law

might be a good option.

I would encourage others to pursue certification to help develop a successful practice. I found that once I achieved board certification, I started to see more sophisticated clients who were looking for the distinction. In elder law, we would all benefit from increasing the number of certified specialists throughout the state. Services vary among counties and attorneys who know what's available in their county can provide a higher quality of services to clients. ■

For more information on the State Bar's specialization program, please visit us on the web at www.ncclauspecialists.gov.

IOLTA (cont.)

- If you are already banking with a Prime Partner Bank, tell them you appreciate their decision.

- If your bank did not choose to become a Prime Partner with NC IOLTA, let your bankers know that you would appreciate it if they would consider joining other North Carolina banks in taking that step. Information on the Prime Partner program is available on the NC IOLTA website, nciolta.org, or by calling NC IOLTA at (919) 828-0477.

More information about comparability requirements and the Prime Partner program are available on the NC IOLTA website (nciolta.org). ■

Featured Artist—Peter Butler

The most sensuous and loaded subject in art is the human figure. "Figure painting are us." The particular subject of the girls swimming underwater suggests an unattended sensuality. These paintings are not intended to titillate. Erotic art has never been interesting to me. Rather, the subject suggests the fullness and supremacy of individual experience. The girls are not aware of us. We are unseen as they pass by our gaze.

—Peter Butler

Peter Butler has been oil painting on canvas and paper for over 20 years, most recently from his studio in Clinton, where he lives. His works have been displayed in a number of regional exhibits and fine art galleries, primarily in Raleigh and Durham.

After spending his childhood in Utah and Wyoming, Butler moved to New Jersey. As a teenager, he regularly visited the art museums in New York City where he discovered the works of Paul Cézanne, Rembrandt, Pablo Picasso, and Vincent van Gogh and decided to pursue a career as an artist. He completed his first painting when he was 15. Butler came to North Carolina as an undergraduate at UNC-Chapel Hill.

In an interview for an article on an exhibit of Butler's paintings in 2009 at the Small House in Clinton, home of the Sampson

County Arts Council, Butler told Chris Berendt of *The Sampson Independent Online*:

The forms I paint are real precise...it's not an impressionist haze....With great American art there is strong color, a sense of concise form, a feeling of optimism. It's cheerful; it's supposed to be. I would like people to see these (paintings) and recognize the pleasures from their own life. You want to strike the feeling of the universal. My stuff is that sunny postcard from your last vacation.

You want to connect to people, you hope they see something that was intended...I don't think it's mysterious what's on the walls here. I don't think they require an artist's text to flush out the meaning...I just love the idea of making things easy on myself and I think you're making it easy on the viewer. Ninety percent of paintings are too complex, and I've been guilty of that myself.

Berendt writes that the room at the Small House devoted to Butler's paintings of swimmers in a pool was jokingly referred to as the "water room" by Butler. The journalist described Butler's reaction to the "water room" paintings as follows:

Butler said, while his paintings depicting swimmers are prevalent—and he has even painted such works on request—he is not afraid of being pigeonholed as the "swimmer painter." In fact, Butler sees a lot of himself in the swimmers. Not only was he a swimmer in college, the people



submerged in the pool provide a fitting description for the life of a painter, he contended. "They go about their way," Butler remarked. "I think that's a nice metaphor for the painting world. The solidarity—you're going about your way, uncaring. I think that's a real appealing idea." ■

Each quarter, the works of a different contemporary North Carolina artist are displayed in the storefront windows of the State Bar building. The artwork enhances the exterior of the building and provides visual interest to pedestrians passing by on Fayetteville Street. The State Bar is grateful to The Mahler Fine Art, the artists' representative, for arranging this loan program. The Mahler is a full-service fine art gallery representing national, regional, and North Carolina artists, and provides residential and commercial consulting. The Mahler, along with its sister gallery, The Collectors Gallery, are located in downtown Raleigh. Readers who want to know more about an artist may contact owners, Rory Parnell and Megg Rader at (919) 896.7503 or info@themahlerfineart.com.



Committee Reconsiders Prior Opinion on Interviewing a Child Prosecuting Witness

Council Actions

At a meeting on July 23, 2010, the State Bar Council adopted the opinions summarized below upon the recommendation of the Ethics Committee:

2009 Formal Ethics Opinion 11

Representing Debtor in Bankruptcy When Lender is Current Client

Opinion rules that a lawyer may undertake the representation of a debtor in a Chapter 13 bankruptcy, although the lender is lawyer's current client, if the lawyer reasonably believes that he will be able to provide competent and diligent representation to both clients and both clients give informed consent.

2009 Formal Ethics Opinion 16

Including Information on Verdicts, Settlements, and Memberships on a Website

Opinion rules that a website may include a case summary section showcasing successful verdicts and settlements if the section contains factually accurate information accompanied by an appropriate disclaimer and that any reference on the website to membership in an organization with a self-laudatory name must comply with the requirements of 2003 FEO 3.

2010 Formal Ethics Opinion 8

Consultation with Lawyer as Prospective Mediator

Opinion rules that a lawyer who consults with both parties to a dispute relative to the lawyer's prospective service as a mediator may not subsequently represent one of the parties to the dispute.

2010 Formal Ethics Opinion 9

Using Stock Photographs in Advertising

Opinion rules that a dramatization disclaimer is not required when using a stock photograph in an advertisement so long as, in the context of the advertisement, the stock photograph is not materially misleading.

Ethics Committee Actions

At its meeting on July 22, 2010, the Ethics Committee voted to withdraw and send the following proposed opinions to sub-

committees for further study: Proposed 2009 FEO 8, *Service as Commissioner After Representing Party to Partition Proceeding*; Proposed 2010 FEO 3, *Cross-examining Current and Former Clients*; Proposed 2010 FEO 6, *Advertising for Legal Employment in Non-Practicing Areas with Intent to Refer Cases*; and Proposed 2010 FEO 7, *Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property*. Four proposed opinions, previously published in the *Journal*, were revised and appear below. One new proposed opinion is also published for comment. The comments of readers are welcomed.

Proposed 2009 Formal Ethics Opinion 7

Interviewing a Child Prosecuting Witness in a Criminal Case Alleging Physical or Sexual Abuse of the Child July 22, 2010

Proposed opinion rules that a criminal defense lawyer or a prosecutor may not interview a child who is the prosecuting witness in a criminal case alleging physical or sexual abuse if the child is younger than the age of maturity as determined by the General Assembly (currently age 14) for the purpose of an in-custody interrogation unless the lawyer has the consent or authorization of a non-accused parent or guardian or a court order; a lawyer may interview a child who is this age or older without such consent or authorization provided the lawyer complies with Rule 4.3, reasonably determines that the child is sufficiently mature to understand the lawyer's role and purpose, and avoids any conduct designed to coerce or intimidate the child.

Introduction

This ethics opinion examines when a criminal defense lawyer or a prosecutor may interview a child who is the prosecuting witness in a criminal case alleging physical or sexual abuse of the child. The opinion is purposefully limited to this factual situation and does not address whether a lawyer may, for example, interview a child who is a wit-

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by September 30, 2010.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

ness to a crime but is not the victim of the crime. The absence of an opinion on the latter subject does not, however, mean that the Ethics Committee has concluded that such interviews are permissible without consent or authorization of a parent, guardian, or the court. A lawyer should take into consideration the principles articulated in this opinion when considering whether to inter-

view any child who was a witness to a violent crime especially one involving the child's family members.

The opinion addresses a difficult dilemma for a lawyer who has a duty to prepare competently by investigating each case and interviewing key witnesses but who does not wish to cause further harm to a child who may have been traumatized by physical or sexual abuse. In preparing this opinion, the Ethics Committee received input from mental health professionals and child advocates. That input led to the committee's determination that the emotional and intellectual sophistication of a child cannot be determined by a lawyer or established by an opinion of the Ethics Committee. However, the General Assembly has determined that a child at a certain age is legally mature for the analogous purpose of responding to an in-custody interrogation. N.C. Gen. Stat. §7B-2101(b). In the absence of a better benchmark, the committee accepts the General Assembly's policy decision on this issue.

When a lawyer is considering whether to seek the consent or authorization of a parent or guardian or a court order to interview a child who is alleged to be the victim of physical or sexual abuse, the lawyer should keep in mind the following information provided to the committee by the experts it consulted. Excessive interviews of child victims lead to additional trauma for the child. A person who is not trained in techniques of forensic interviewing of children often makes grave errors that can taint the interview or add to the child's trauma. It is preferable for the interview to be performed by a professional. To avoid intimidating the child, a support person for the child (family member or other appropriate person) should be present at the interview. In light of the foregoing, a lawyer should investigate whether forensic interviews with the child have already taken place and are available on tape; if a tape of an interview with the child is available, the lawyer should consider foregoing further interviews.

Inquiry #1:

Attorney A represents a criminal defendant on a charge of taking indecent liberties with a child. To prepare for trial, Attorney A would like to interview the child who is the victim of the alleged crime. The child is not a party to the criminal action. She does not have a lawyer and a guardian ad litem has not been appointed to represent her inter-

ests. May Attorney A interview the child without the consent of the child's parent or legal guardian?

Opinion #1:

Yes, if the child is older than the age of maturity for the purpose of an in-custody interrogation as determined by the General Assembly in N.C. Gen. Stat. §7B-2101(b), which provides that an in-custody admission by a child under the age of 14 is inadmissible if the interrogation was made outside the presence of the child's parent, guardian, custodian, or attorney. Below the age designated in the statute, it is presumed that a child cannot understand the purpose of an interview with a lawyer, the lawyer's role, or the child's right to decline the interview or terminate the interview at any time. If the child is this age or older, Attorney A may seek an interview with the child without the consent of the child's parent or legal guardian, provided Attorney A respects the rights of the child and there is no legal requirement that the consent of the parent or legal guardian be obtained. If the General Assembly changes the designated age in N.C. Gen. Stat. §7B-2101(b), or a successor statute, this opinion shall be similarly changed.

It is Attorney A's professional duty to prepare competently and diligently to defend the client; *a priori*, in most cases this includes interviewing the victim of the alleged crime if the victim will consent to the interview. Nevertheless, a child frequently does not have the emotional or intellectual maturity to make an informed decision about whether to consent to the interview, or the emotional or intellectual maturity to understand the role of the lawyer or the purpose of the interview.

Rule 4.3(b) states that, when dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

As noted in comment [1] to Rule 4.3, "[a]n unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client."

Many children are inexperienced in legal matters and will not understand the role of a lawyer who seeks an interview. Many children will naively defer to the lawyer because he or she is an adult. Many children will be easily mislead or subject to the undue influence of an authority figure such as a lawyer. Because of their psychological and emotional immaturity, it is, therefore, presumed that a lawyer may not interview a child who is younger than age 14 without violating Rule 4.3(b) unless the lawyer obtains the prior consent or authorization of the child's (non-accused) parent or legal guardian or obtains an order from a court with jurisdiction. A child who is age 14 or older may be interviewed without prior consent or authorization of a parent, guardian or the court provided the lawyer who seeks to interview the child reasonably determines that the child is sufficiently mature to understand, when disclosed by the lawyer, (1) the role of the lawyer, (2) who the lawyer represents, (3) the purpose of the interview, and (4) that the child is at liberty to refuse or to terminate the interview. If the lawyer cannot reasonably conclude that the child is sufficiently mature, both emotionally and intellectually, to understand these four things, the lawyer may not interview the child unless a legal guardian or parent consents or a court orders the interview. If the conduct of the legal guardian or the parent toward the child is at issue in the criminal case, consent must be obtained from a guardian ad litem, a court, or other appropriate person or entity with authority to give consent. *See* Opinion #3; *see also* Rule 7.1 of the General Rules of Practice for the Superior and District Courts (providing procedure for appointment of lawyer to serve as guardian ad litem for minor who is victim or potential witness in a criminal proceeding).

Rule 3.4(b) prohibits a lawyer from counseling or assisting a witness to testify falsely. This includes making improper suggestions or offering inducements that might lead a naïve and vulnerable child to change or alter his or her testimony. Although a lawyer may reasonably conclude that a child who is age 14 or older is sufficiently mature to consent to the interview, the lawyer may not engage in emotional manipulation or other forms of undue influence, coercion, or intimidation that may inhibit or alter the witness's testimony.

Rule 4.2(a) prohibits a lawyer from communicating about the subject of the repre-

sentation with a person the lawyer knows to be represented by another lawyer in the matter, unless the other lawyer consents or the communication is authorized by law or court order. Before interviewing a child, if allowed to do so under this opinion, the lawyer must determine whether the child is represented and, if applicable, follow the requirements of Rule 4.2(a).

Although a communication without the consent or knowledge of the child's parent or guardian may be allowed under this opinion, a lawyer should err on the side of giving notice to the parent or guardian—and preferably obtaining the consent of the parent or guardian—unless circumstances are such that the lawyer has a good faith belief that the child's candor may be affected by the knowledge of the parent.

Inquiry #2:

May the prosecutor interview the child who is the alleged victim of physical or sexual abuse?

Opinion #2:

Yes, subject to the same constraints set forth in Opinion #1.

This opinion does not impede a prosecutor's fulfillment of the duty under the Crime Victims' Rights Act, N.C. Gen. Stat. Chap. 15A, Article 46, to offer a victim the opportunity to consult with the prosecutor to obtain the views of the victim about the disposition of the case. *See* N.C. Gen. Stat. §15A-832(f). N.C. Gen. Stat. §15A-841 states that if the victim is mentally or physically incompetent, the victim's rights under the Act may be exercised by the victim's next of kin or legal guardian. A prosecutor may, therefore, fulfill his or her duty under the Act by speaking with the parent or guardian of an alleged victim who is under the age of 14.

Inquiry #3:

The defendant is the child's parent or legal guardian and is accused of conduct that, if proven, would constitute abuse or neglect of the child. May the defendant's criminal defense lawyer interview the child subject to the constraints set forth in Opinion #1?

Opinion #3:

In most instances of alleged child abuse or neglect by a parent or guardian, a guardian ad litem (GAL) and an attorney advocate are appointed to represent the child. *See* N.C.

Gen. Stat. §7B-601. RPC 249 prohibits a lawyer from communicating with a child who is represented by a GAL and an attorney advocate unless the lawyer obtains the consent of the attorney advocate. If a GAL has not been appointed for the child, the lawyer may interview the child subject to the constraints set forth in Opinion #1.

Proposed 2009 Formal Ethics Opinion 14

Placing Client's Title Insurance in Agency in Which Lawyer's Spouse Has an Ownership Interest July 22, 2010

Proposed opinion rules that a lawyer participating in a real estate transaction may not in such transaction place his client's title insurance in a title insurance agency in which the lawyer's spouse has any ownership interest.

Inquiry:

May Lawyer participating in a real estate transaction place his client's title insurance with a title insurance agency in which Lawyer's spouse has an ownership interest?

Opinion:

No. Rule 1.7 provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one or more clients may be materially limited by a personal interest of the lawyer. Rule 1.7(a)(2).

The Ethics Committee has previously examined personal conflicts of interest between title insurance agencies and real estate closing lawyers. In CPR 101 (1977), the Ethics Committee concluded that it is unethical for a lawyer who owns a substantial interest, directly or indirectly, in a title insurance agency, and who acts as a lawyer in a real estate transaction insured by the title insurance agency, to receive any compensation or benefit from the title insurance agency regardless of whether the ownership interest is disclosed to the client.

In RPC 185 (1994), the Ethics Committee determined that even an insubstantial interest in a title insurance agency could materially impair the judgment of the closing lawyer. The opinion provides that if a title agency, and, therefore, indirectly a closing lawyer who owns an interest in the title agency, will receive compensation from the client as a result of the closing of the transac-

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

tion, the lawyer's personal interest in having the title insurance agency receive its compensation could conflict with the lawyer's duty to close the transaction only if it is in the client's best interest. The opinion held that the conflict of interest is too great to be allowed even if the client wishes to consent.

In an unpublished ethics decision, ED 97-6 (1998), the Ethics Committee examined a fact scenario substantially similar to the one currently presented and determined that it is a conflict of interest for a lawyer to perform title work and place the title insurance with a title insurance agency operated by the lawyer's spouse.

The instant scenario presents a personal conflict of interest. The lawyer's personal interest in having his spouse's title insurance agency receive its compensation may conflict with the lawyer's duty to close the transaction only if it is in the client's best interest. In addition, the lawyer's personal relationship with the owner of the title insurance company will influence the lawyer's choice of the spouse's company as the insurer, as well as the vigorousness of the lawyer's negotiations with the title company on his client's behalf. Issues of title insurance coverage may have to be negotiated between the closing lawyer and the insurer. The lawyer's client and the insurer will necessarily have competing interests as to the extent of the coverage and the amount of the premium.

The conflict of interest is too great to be allowed, even with the client's informed consent. A closing lawyer must be able to make an independent recommendation of a title insurance company to his client, unbiased by any personal interest. In addition, a lawyer opining on title to property should be independent from the title insurance agency issuing the title insurance in reliance upon that

opinion. This is consistent with the emphasis that the North Carolina legislature has placed on the professional and financial independence of the closing lawyer from the title insurance agency. See, e.g. N.C.G.S. § 58-26-1(a)(title insurance company may not issue insurance as to North Carolina real property unless the company has obtained the opinion of a North Carolina licensed attorney who is *not an employee or agent of the company*) and N.C.G.S. § 58-27-5(a) (lawyer who performs legal services incident to a real estate sale may not receive any payment, directly or indirectly, in connection with the issuance of title insurance for any real property which is a part of such sale).

This scenario differs from RPC 188, in which the Ethics Committee concluded that a lawyer may represent the buyer and/or lender in a real estate transaction brokered by the lawyer's spouse. RPC 188 provides that, although there is a conflict, clients may consent to the representation. RPC 188 can be distinguished because the lawyer did not choose the real estate broker for his client and was not involved in negotiations with the real estate broker as to the terms of the real estate sales contract.

**Proposed 2009 Formal Ethics
Opinion 17
Tacking as Question of Standard of
Care
July 22, 2010**

Proposed opinion rules that whether a lawyer rendering a title opinion to a title insurer should tack to an owner's policy of title insurance or a mortgagee's (lender's) policy is a question of standard of care and outside the purview of the Ethics Committee

Inquiry:

RPC 99 holds that the Rules of Professional Conduct do not require personal inspection of all documents in the chain of title so long as a lawyer rendering an opinion on title for real property fully discloses to the client the precise nature and extent of the service being rendered. The opinion further states, "Since title insurers frequently omit exceptions in mortgagees' policies that would appear in owners' policies, tacking should be limited to tacking onto owners' policies."

May a lawyer render a title opinion to a title insurance company by tacking to a mortgagee's (lender's) title insurance policy?

Opinion:

This issue of the appropriate standard of care for rendering a title opinion is outside the purview of the Ethics Committee. To the extent that RPC 99 appeared to opine on the standard of care relative to tacking to an owner's policy versus a mortgagee's (lender's) policy for the purpose of rendering a title opinion, that part of the opinion is withdrawn.

Whether tacking to an owner's policy or a mortgagee's policy, a lawyer's duty is to provide competent representation to his client, consistent with Rule 1.1, and to reasonably consult with the client about the means used to accomplish the client's objectives. Rule 1.4(a)(2). The lawyer must consult with the client before using a method of rendering a title opinion that might present additional risk for the client.

**Proposed 2010 Formal Ethics
Opinion 4
Lawyer Participating in Barter
Exchange
July 22, 2010**

Proposed opinion provides guidelines for participation in a barter exchange.

Inquiry:

Lawyer would like to participate in a trade or "barter" exchange that is an association of businesses that exchange goods or services. Members of the barter exchange are paid in barter dollars that can be used to pay other members for their services. For example, a lawyer who is a member prepares a will for a member who is a landscaper and receives barter dollars that can then be used by the lawyer to purchase a variety of services from other members, not solely landscaping services. The barter exchange manager publishes a directory of members and may advertise to members the goods or services available from other members. In addition to an entrance fee and a monthly administrative fee, the exchange manager requires members to pay a cash transaction fee of 10% on the gross value of each purchase from a member through the exchange. For example, if a lawyer provides \$500 in services to another member, in addition to the fee paid to the lawyer, the recipient pays a \$50 fee to the manager of the exchange for a total payment of \$550 (barter dollars and cash) for the legal services.

The barter exchange lists all participating businesses in the "trading network." From

this list, a member who would like to buy services or goods selects a business. A "buyer" who needs legal services would select a lawyer from the list of lawyers available in the trading network. Members are encouraged to call the exchange manager to get linked with other members when in need of particular goods or services. Trades between participating businesses are voluntary and the provision of goods or services is between the two participating businesses without interference from the barter exchange or its manager. Members are not under any obligation to use the barter exchange for goods or services and, if a member cannot find a suitable business in the trading network with which to do business, the member may pay cash for goods or services to a business that is not a member of the exchange. Similarly, a member of the exchange is not required to do business with an exchange member who requests goods or services.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324 (1982), recognized the barter exchange manager as the third-party record keeper and clearinghouse for barter transactions among the members of an exchange and also recognized "trade" or "barter" dollars as legal, taxable dollars that may be used as an alternative payment method. Under TEFRA, all trade revenue is treated as taxable income and must be reported using Form 1099-B.

May Lawyer participate in the barter exchange?

Opinion:

Yes, as long as the lawyer's professional judgment is not compromised by participation in the exchange, the lawyer ensures that listings and advertisements of the exchange comply with the requirements for legal advertising, there is full disclosure of the states in which the lawyer is licensed, and clients do not use barter dollars to pay in advance for litigation or other expenses of representation.

This inquiry raises the following questions: (1) whether a lawyer may accept payment for services in a form other than money; (2) whether a barter exchange is a lawyer referral service and, therefore, subject to the restrictions on lawyer referral services; (3) whether a participating lawyer can comply with the advertising and solicitation limitations in the Rules of Professional Conduct; (4) whether payments to the barter exchange violate the prohibition on sharing legal fees

with a nonlawyer; and (5) whether clients may pay litigation expenses in barter dollars. Each of these questions is addressed below.

A lawyer may accept payment for legal services in a form other than money. *See* Rule 1.5, cmt. [4]. Therefore, there is no prohibition on accepting barter dollars as payment for legal services.

With regard to lawyer referral services, Rule 7.2(b) provides as follows:

A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule; [and] (2) pay the usual charges of a not-for-profit lawyer referral service that complies with Rule 7.2....

A lawyer referral service is a service that purports to screen the lawyers who participate and to match prospective clients with suitable participating lawyers. *See* 04 FEO 1 (online matching service not subject to non-profit limitation on lawyer referral services). Comment [6] to Rule 7.2 adds that a lawyer referral service:

is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

A barter exchange that provides a complete, impartial list of all participating lawyers, does not purport to recommend or select a lawyer for an exchange member seeking legal services, and does not restrict the number of participating lawyers is not a lawyer referral service.

The next question is whether a participating lawyer can comply with the limitations on lawyer advertising and solicitation in the Rules of Professional Conduct. A lawyer participating in a barter exchange will be responsible for the content of all advertising about the lawyer's services to other members. Rule 7.1(a) allows advertising that is not false or misleading. As long as the trading network list or directory of members and any other advertisement to members of the barter exchange does not include information about a participating lawyer that is false or misleading, a

lawyer may be included in the list, directory, or advertisement. In addition, to avoid unauthorized practice of law, the participating lawyer must ensure that all exchange listings, directories, or advertisements identify the states in which the lawyer is licensed.

Rule 7.3(a) prohibits in-person solicitation of prospective clients either by a lawyer or by an agent of a lawyer. If the manager of the exchange, or a third party such as a broker, engages in in-person solicitation of exchange members on behalf of other exchange members, a lawyer who is an exchange member may not allow such solicitation to occur on the lawyer's behalf. If participation in the in-person solicitation or brokerage of services is a condition of membership in the exchange, a lawyer may not be a member of the exchange.

The next question is whether the fee structure for the barter exchange violates the prohibition on sharing legal fees with a nonlawyer in Rule 5.4(a). The manager of the barter exchange charges a cash transaction fee of 10% on the gross value of each purchase from a member through the exchange. The transaction fee is paid by the recipient of the services; the lawyer is not required to give 10% of his fee to the exchange manager. Although prohibited in the context of compensating nonlawyer employees (*see* RPC 147), paying for services of a nonlawyer based upon a percentage of a legal fee is not *per se* fee sharing. The use of credit cards to pay for legal services has long been allowed, although credit card banks routinely charge a "discount fee" that is a percentage of the legal fee charged to the credit card. *See* CPR 129 (lawyers may accept payment of legal fees by credit card). Paying a percentage fee to a barter exchange manager is no different than paying a discount fee to a credit card bank. The fee is a surcharge on the transaction and is not fee sharing with a nonlawyer. *See* ABA Formal Opinion 88-356 (1988)(lawyer placement agency's fee based on the amount of the legal fee is not fee splitting).

We agree with the following conclusion of the New York State Bar Association Committee on Professional Ethics in N. Y. State Bar Ass'n. Comm. on Prof'l. Ethics Op. 665 (1994), which allows a lawyer to participate in a barter exchange:

There are a number of rationales for the prohibition against sharing legal fees with non-lawyers: (1) to avoid the possibility of a nonlawyer interfering with the exercise of

the lawyer's professional judgment in representing a client, (2) to ensure that the total fee paid by the client is not unreasonably high, and (3) to ensure that the nonlawyer is not motivated to engage in improper solicitation of business for the lawyer. [Citations omitted.] We do not believe that the proposed barter exchange implicates these concerns so long as the barter exchange exercises no influence over the professional judgment of the lawyer, the lawyer's legal fee complies with [the reasonableness requirement of] DR 2-106(A) of the [New York] Code [of Professional Responsibility], and the exchange sponsor does not engage in in-person solicitation of customers or use written advertising materials that the lawyer/participant could not use.

The last question is whether a member of the barter exchange who contracts with a lawyer may pay in advance for litigation expenses or other expenses of representation by advancing barter dollars to the lawyer. Rule 1.15 requires a lawyer to account for funds entrusted to the lawyer for payment of third parties by depositing those funds into a trust account. Because barter dollars cannot be deposited into a trust account, all advance payments of litigation expenses by a barter exchange client must be paid in cash or by check or credit card.

In summary, a lawyer may participate in a barter exchange as long as the exchange exercises no influence over the professional judgment of the lawyer; the listing and advertisements of the exchange are truthful, not misleading, and identify the states in which the lawyer is licensed; there is no in-person solicitation of members by the barter exchange manager or a broker on behalf of the lawyer; and advance payments of litigation expenses or other expenses of representation are not in barter dollars.

Proposed 2010 Formal Ethics Opinion 10 Charging Client for Out-of-Office Consultations July 22, 2010

Proposed opinion rules that a law firm may charge a client for the expenses associated with an out-of-office consultation so long as advertisements referencing the service indicate that the client will be charged for the service and the

CONTINUED ON PAGE 52

Amendments Pending Approval of the Supreme Court

At its meetings on April 16, 2010, and July 23, 2010, the council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text see the Summer 2010 edition of the *Journal* or visit the State Bar website: www.ncbar.gov):

Proposed Amendment to Membership Requirements

27 N.C.A.C. 1A, Section .0200, Membership – Annual Membership Fees

The proposed amendment requires a State Bar member to update the member's address, including email address, each year.

Proposed Amendment to Eliminate a Standing Committee of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

The Justice System Committee of the State Bar Council has been defunct for many years. The proposed amendment eliminates this standing committee of the council.

Proposed Amendment to Model Bylaws for Judicial District Bars

27 N.C.A.C. 1A, Section .1000, Model Bylaws for Use by Judicial District Bars

The proposed amendment to the model bylaw incorporates the statutory requirement (N.C. Gen. Stat. §84-18.1(b)) that 30 days

notice be given of any meeting at which there will be a vote on mandatory district bar dues.

Proposed Amendment to Rules Governing Judicial District Grievance Committees

27 N.C.A.C. 1B, Section .0200, Rules Governing Judicial District Grievance Committees

The proposed amendment increases the number of members of a district grievance committee.

Proposed Amendment to the Rules Governing the Practical Training of Law Students

27 N.C.A.C. 1C, Section .0200, Rules Governing the Practical Training of Law Students

The proposed amendment authorizes a supervising lawyer to issue a business card to a law student practicing under the auspices of the rules provided the student's status as a nonlawyer is affirmatively disclosed.

Proposed Amendments to the Rules and Regulations Governing the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program, and Section .1600, Regulations Governing the Administration of the Continuing Legal

Education Program

The proposed amendments require a lawyer to be a nonresident for at least six months in a given year to qualify for the nonresident exemption from mandatory CLE; increase the number of days for submission and for processing of a request for approval of a course or program; and permit the Board of Continuing Legal Education to waive interest on delinquent payments of sponsor fees upon a showing of good cause.

Proposed Amendments to the Rules for Prepaid Legal Services Plans

27 N.C.A.C. 1E, Section .0300, Rules Concerning Prepaid Legal Services Plans

The proposed amendments authorize a member of the State Bar's legal staff to review and pass upon initial applications for registration of prepaid legal services plans.

Proposed Amendment to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct

The proposed amendment to Rule 8.3, *Reporting Professional Misconduct*, exempts a lawyer acting as a mediator from reporting professional misconduct if information relative to the misconduct is protected from disclosure by the North Carolina Supreme Court Standards of Professional Conduct for Mediators.

Proposed Amendments

At its meeting on July 23, 2010, the council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to Reinstatement Rules to Make Disciplinary Suspension Supersede Administrative Suspension

27 N.C.A.C. 1B, Discipline and

Disability Rules, Section .0100 Discipline and Disability of Attorneys

27 N.C.A.C. 1D, Rules of the Standing Committees of the North Carolina State Bar, Section .0900 Procedures for Administrative Committee

Presently, when a member of the State Bar seeking reinstatement to active practice is subject to both an administrative order of suspension and a disciplinary order of sus-

pension, it is unclear which order takes precedence. The proposed amendments provide that an administrative suspension order dissolves when an order of reinstatement is granted from a disciplinary suspension, and require the petitioner to pay the administrative reinstatement fee (\$125 for membership fees suspension; \$250 for CLE suspension) as a condition of reinstatement from a disciplinary suspension.

The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined, deletions are interlined.**

Subchapter 1B, Section .0100 Discipline and Disability of Attorneys

.0125 Reinstatement

(a) After disbarment

(b) After suspension

(1) Restoration

(3) Reinstatement Requirements - Any suspended attorney seeking reinstatement must file a verified petition with the secretary, a copy of which the secretary will transmit to the counsel. The petitioner will have the burden of proving the following by clear, cogent, and convincing evidence:

(A)

(J) **Payment of Fees and Assessments** - payment of all membership fees, Client Security Fund assessments, and late fees due and owing to the North Carolina State Bar, including any reinstatement fee due under Rule .0904 or Rule .1524 of subchapter 1D of these rules, as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of suspension.

(4) **Investigation and Response**

(8) **Reinstatement Order** - The hearing panel will determine whether the petitioner's license should be reinstated and enter an appropriate order, which may include additional sanctions in the event violations of the petitioner's order of suspension are found. In any event, the hearing panel must include in its order findings of fact and conclusions of law in support of its decision and tax such costs as it deems appropriate for the necessary expenses attributable to the investigation

and processing of the petition against the petitioner.

(c)

Subchapter 1D, Section .0900 Procedures for Administrative Committee .0904 Compliance After Suspension for Failure to Fulfill Obligations of Membership

(a) Reinstatement Within 30 Days of Service of Suspension Order

(f) Reinstatement from Disciplinary Suspension. Notwithstanding the procedure for reinstatement set forth in the preceding paragraphs of this Rule, if an order of reinstatement from disciplinary suspension is granted to a member pursuant to Rule .0125 of subchapter 1B of these rules, any outstanding order granting inactive status or suspending the same member for failure to fulfill the obligations of membership under this section shall be dissolved and the member shall be reinstated to active status.

Proposed Amendments to Reinstatement Rules to Rationalize the Procedures and Requirements for Reinstatement

27 N.C.A.C. 1D, Rules of the Standing Committees of the North Carolina State Bar, Section .0900 Procedures for Administrative Committee

To ensure the competency and fitness of a lawyer who is returned to active status from inactive status or administrative suspension, proposed amendments to the reinstatement rules require a petitioner for reinstatement who has been inactive or suspended for a year or more to take 12 CLE credit hours for each year of inactivity or suspension. In addition, a petitioner who has been inactive or suspended for seven years or more will be required to take the bar examination. (A year or more of active status in another state where the petitioner is licensed offsets the seven years.) The CLE and bar exam requirements will not apply to a member who is on inactive status at the time these amendments become effective; however, the requirements will apply to any member who transfers to inactive status after the effective date of the amendments and to any suspended member regardless of the date of suspension. The proposed rule amendments allow the chair of the Administrative Committee to appoint a panel of committee members to consider a

petition for reinstatement and make a recommendation to the council on behalf of the committee, thereby preserving the impartiality of other members of the committee who might be required to serve on a hearing panel in the event the petition is denied and the member appeals. Finally, the proposed rule amendments create a procedure whereby the secretary of the State Bar may reinstate an inactive member to active status upon petition by the member for reinstatement if the member has fulfilled all of the obligations of membership required for reinstatement, including payment of fees, and there are no issues relating to the inactive member's character or fitness.

.0902 Reinstatement from Inactive Status

(a) Eligibility to Apply for Reinstatement

...

(b) Contents of Reinstatement Petition

The petition shall set out facts showing the following:

(1) that the member has provided all information requested in an application form prescribed by the council and has signed the form under oath;

(2) unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph (b)(6) of this rule, that the member satisfied the minimum continuing legal education requirements, as set forth in Rule .1518 of this subchapter, for the calendar year immediately preceding the year in which the member was transferred to inactive status (the "subject year"), including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year,

(3)

(4) [this provision shall be effective for all members who are transferred to inactive status on or after January 1, 1996 through the effective date of these amendments] if ~~2 or~~ more than 2 years (as used in this rule, a year is measured in 12-month increments and does not refer to a calendar year) have elapsed between the date of the entry of the order transferring the member to inactive status and the date the petition is filed ~~with the secretary of the State Bar~~, that within one year prior to filing the petition, the member completed 15

hours of continuing legal education (CLE) approved by the Board of Continuing Legal Education pursuant to Rule .1519 of this subchapter. Of the required 15 CLE hours, 3 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism; ~~and~~

(5) [this provision shall be effective for all members who are transferred to inactive status on or after the effective date of these amendments] if more than 1 but less than 7 years have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, that during the period of inactivity and within 2 years prior to filing the petition, the member has completed 12 hours of approved CLE for each year that the member was inactive. For each 12-hour increment, 4 hours may be taken online; 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism; and 5 hours must be earned by attending courses determined to be practical skills courses by the Board of Continuing Legal Education or its designee; provided, if during the period of inactivity the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision;

(6) [this provision shall be effective for all members who are transferred to inactive status on or after the effective date of these amendments] if 7 years or more have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member has obtained a passing grade on a regularly scheduled North Carolina bar examination; provided, each year of active licensure in another state during the period of suspension shall offset one year of suspension for the purpose of calculating the 7 years necessary to actuate this provision; and

~~(5)(7)~~

(c) Service of Reinstatement Petition....

(e) Recommendation of Administrative Committee

After any investigation of the petition by the counsel is complete, the Administrative

Committee will consider the petition at its next meeting and shall make a recommendation to the council regarding whether the petition should be granted. The chair of the Administrative Committee may appoint a panel composed of at least three members of the committee to consider any petition for reinstatement and, on behalf of the Administrative Committee, to make a recommendation to the council regarding whether the petition should be granted.

(f) Hearing Upon Denial of Petition for Reinstatement

(g) Reinstatement by Secretary of the State Bar. Notwithstanding paragraph (e) of this rule, an inactive member may petition for reinstatement pursuant to paragraphs (a) and (b) of this rule and may be reinstated by the secretary of the State Bar upon a finding that the inactive member has complied with or fulfilled the conditions for reinstatement set forth in this rule; there are no issues relating to the inactive member's character or fitness; and the inactive member has paid all fees owed to the State Bar including the reinstatement fee. Reinstatement by the secretary is discretionary. If the secretary declines to reinstate a member, the member's petition shall be submitted to the Administrative Committee at its next meeting and the procedure for review of the reinstatement petition shall be as set forth in paragraph (e) of this rule.

.0904 Compliance After Suspension for Failure to Fulfill Obligations of Membership

(a) Reinstatement Within 30 Days of Service of Suspension Order.

....

(b) Reinstatement More than 30 Days after Service of Suspension Order.

....

(c) Contents of Reinstatement Petition

The petition shall set out facts showing the following:

(1) that the member has provided all information requested in a form to be prescribed by the council and has signed the form under oath;

(2) unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph (c)(4) of this rule, that the member satisfied the minimum continuing legal education (CLE) requirements, as set forth in Rule

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

.1518 of this subchapter, for the calendar year immediately preceding the year in which the member was suspended (the "subject year"), including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year ~~and;~~

(3) if ~~two or more~~ than 1 year but less than 7 years (as used in this rule, a year is measured in 12-month increments and does not refer to a calendar year) have elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, that during the period of suspension and within one year 2 years prior to filing the petition, the member ~~has~~ has completed 12 hours of approved CLE accredited pursuant to Rule .1519 of this subchapter, including at least 3 hours of instruction in the areas of professional responsibility and/or professionalism for each year that the member was suspended. For each 12-hour increment, 4 hours may be taken online; 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism; and 5 hours must be earned by attending courses determined to be practical skills courses by the Board of Continuing Legal Education or its designee; provided, if during the period of suspension the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision;

(4) if 7 years or more have elapsed between the effective date of the suspension order and the date that the petition is filed, the member has obtained a passing grade on a regularly scheduled North Carolina bar examination; provided, each year of active licensure in another state during the period of sus-

pension shall offset one year of suspension for the purpose of calculating the 7 years necessary to actuate this provision;
~~(3)(5) ...;~~
~~(4)(6)~~
~~(5) that the member has filed a certificate of insurance coverage for the current year;~~
[re-numbering remaining paragraphs]
(d)

Proposed Amendment to the Plan of Legal Specialization

27 N.C.A.C. 1D, Rules of the Standing Committees of the North Carolina State Bar, Section .1700, The Plan of Legal Specialization

The proposed amendments to the Plan of Legal Specialization will allow the Board of Legal Specialization to appoint five advisory members to a specialty committee for the purpose of enhancing the ability of a specialty committee to develop, administer, or give a specialty exam or to create a new subspecialty. The board may waive the peer review and examination requirements for certification for any initial advisory member of a specialty committee.

.1719 Specialty Committees

(a) The board shall establish a separate specialty committee for each specialty in which specialists are to be certified....

(b) Each specialty committee shall advise and assist the board in carrying out the board's objectives and in the implementation and regulation of this plan in that specialty... Each specialty committee shall be charged with actively administering the plan in its specialty and with respect to that specialty shall:

(1) ~~after public hearing on due notice,~~ recommend to the board reasonable and nondiscriminatory standards applicable to that specialty;

(2)

(c) The board may appoint advisory members to a specialty committee to assist with the development, administration, and grading of the examination, the drafting of standards for a subspecialty, and any other activity set forth in paragraph (b) of this rule. Advisory members shall be non-voting except as to any specific activity delegated to the advisory members by the board or by the chair of the specialty committee, including the evaluation of applications for certification. No more than five advisory

members may be appointed to a specialty committee. Advisory members shall be lawyers licensed and currently in good standing to practice law in this state who, in the judgment of the board, are competent in the field of law to be covered by the specialty. Advisory members shall hold office for an initial term of three years and shall thereafter serve at the discretion of the board for not more than two additional three-year terms. Appointment by the board to a vacancy shall be for the remaining term of the advisory member.

.1720 Minimum Standards for Certification of Specialists

(a) To qualify for certification as a specialist, a lawyer applicant must pay any required fee, comply with the following minimum standards, and meet any other standards established by the board for the particular area of specialty.

(1)

(4) The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of qualification in the specialty through peer review by providing, as references, the names of at least five lawyers, all of whom are licensed and currently in good standing to practice law in this state, or in any state, or judges, who are familiar with the competence and qualification of the applicant as a specialist. None of the references may be persons related to the applicant or, at the time of application, a partner of or otherwise associated with the applicant in the practice of law. The applicant by his or her application consents to confidential inquiry by the board or appropriate disciplinary body and other persons regarding the applicants competence and qualifications to be certified as a specialist.

(5) The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability in the specialty for which certification is applied. The examination must be applied uniformly to all applicants within each specialty area. The board shall assure that the contents and grading of the examination are designed to produce a uniform level of competence among the various specialties.

(b) ...

(c) The board may adopt uniform rules waiving the requirements of Rules .1720(a)(4) and (5) above for members of a specialty committee, including advisory members, at the time that the initial written examination for that specialty or any subspecialty of the specialty is given, and permitting said members to file applications to become a board certified specialist in that specialty upon compliance with all other required minimum standards for certification of specialists.

(d)

Proposed Amendments to the Standards for the Workers' Compensation Law Specialty

27 N.C.A.C. 1D, Rules of the Standing Committees of the North Carolina State Bar, Section .2700 Certification Standards for the Workers' Compensation Law Specialty

The proposed amendments to the standards for the workers' compensation specialty clarify the CLE requirements for certification and continued certification as a specialist and add the law relating to long-term disability or Medicaid/Medicare claims to the list of related fields for the purpose of satisfying the CLE requirements for certification and continued certification as a specialist.

.2705 Standards for Certification as a Specialist in Workers' Compensation Law

Each applicant for certification as a specialist in workers' compensation law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in workers' compensation law:

(a) Licensure and Practice

(c) Continuing Legal Education - An applicant must earn no less than 36 hours of accredited continuing legal education (CLE) credits in workers' compensation law and related fields during the three years preceding application, with not less than six credits earned in courses on workers' compensation law in any one year. ~~Of the 36 hours of CLE, at least 18 hours shall be in workers' compensation law, and the balance~~ The remaining 18 hours may be earned in courses on workers' compensation law or any of ~~may be in~~ the following related fields: civil trial practice and procedure; evidence; mediation; medical injuries, medicine, or anatomy; labor and employment law; ~~and~~ Social Security disabili-

ty law; and the law relating to long-term disability or Medicaid/Medicare claims.

(d) Peer Review

.2706 Standards for Continued Certification as a Specialist

The period of certification is five years....each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited continuing legal education (CLE) credits in workers' compensation law and related fields during the five years preceding application. Not less than six credits may be earned in any one year. Of the 60 hours of CLE, at least 30 hours shall be in workers' compensation law, and the balance may be in the following related fields: civil trial practice and procedure; evidence; mediation; medical injuries, medicine, or anatomy; labor and employment law; ~~and~~ Social Security disability law; and the law relating to long-term disability or Medicaid/Medicare claims. Effective [date of adoption], the specialist must earn not less than six credits in courses on workers' compensation law each year and the balance of credits may be earned in courses on workers' compensation law or any of the related fields previously listed.

(c) Peer Review

Proposed Amendments to the Standards for the Social Security Disability Law Specialty

27 NCAC 1D, Rules of the Standing Committees of the North Carolina State Bar, Section .2800, Certification Standards for the Social Security Disability Law Specialty

The proposed amendments add veterans' disability law to the list of related fields for the purpose of satisfying the CLE requirements for certification and continued certification as a Social Security disability law specialist.

.2805 Standards for Certification as a Specialist in Social Security Disability Law

Each applicant for certification as a specialist in Social Security disability law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in Social Security dis-

ability law:

(a) Licensure and Practice

(b) Substantial Involvement

(c) Continuing Legal Education - An applicant must earn no less than 36 hours of accredited continuing legal education (CLE) credits in Social Security disability law and related fields during the three years preceding application, with not less than six credits earned in any one year. Of the 36 hours of CLE, at least 18 hours shall be in Social Security disability law, and the balance may be in the following related fields: trial skills and advocacy; practice management; medical injuries, medicine, or anatomy; ERISA; labor and employment law; elder law; workers' compensation law; veterans' disability law; and the law relating to long term disability or Medicaid/Medicare claims.

(d) Peer Review

.2806 Standards for Continued Certification as a Specialist

The period of certification is five years....each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited continuing legal education credits in Social Security disability law and related fields during the five years preceding application. Not less than six of the credits may be earned in any one year. Of the 60 hours of CLE, at least 20 hours shall be in Social Security disability law, and the balance may be in the following related fields: trial skills and advocacy; practice management; medical injuries, medicine, or anatomy; ERISA; labor and employment law; elder law; workers' compensation law; veterans' disability law; and the law relating to long term disability or Medicaid/Medicare claims.

(c) Peer Review

Proposed Amendments to the Standards for the Criminal Law Specialty and to Create a New Specialty in Appellate Practice

27 N.C.A.C. 1D, Rules of the Standing Committees of the North Carolina State Bar, Section .2500 Certification Standards for the Criminal Law Specialty

27 N.C.A.C. 1D, Rules of the Standing

Committees of the North Carolina State Bar, Section .3000 Certification Standards for the Appellate Practice Specialty

A new specialty certification in appellate practice is proposed. It is believed that certification of lawyers as appellate practice specialists will improve the quality of appellate representation by helping to establish standards of practice and encouraging specialists to share their knowledge and skill with other lawyers. The proposed standards are consistent with the other specialties in requiring a successful applicant to demonstrate substantial involvement, attendance at CLE seminars in the specialty, adequate peer review, and passage of an examination.

At present, the criminal law specialty includes a subspecialty for certification in criminal appellate practice. A single specialty in appellate practice that encompasses both criminal and civil law is appropriate as the skills and knowledge necessary for appellate practice remain constant regardless of practice area. Therefore, all existing criminal appellate practice specialists will be transitioned to appellate practice specialists and the criminal law appellate subspecialty will be eliminated. Below, the proposed rule amendments deleting the criminal appellate practice subspecialty precede the proposed standards for the new specialty in appellate practice.

Section .2500 Certification Standards for the Criminal Law Specialty

.2501 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates criminal law, including the ~~subs~~specialties of criminal appellate practice and subspecialty of state criminal law, as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) is permitted.

.2502 Definition of Specialty

The specialty of criminal law is the practice of law dealing with the defense or prosecution of those charged with misdemeanor and felony crimes in state and federal trial ~~and appellate~~ courts. ~~Subspecialties~~ The subspecialty in the field ~~are~~ is identified and defined as follows:

~~(a) Criminal Appellate Practice - The practice of criminal law at the appellate court level;~~

~~(b) State Criminal Law - The practice of criminal law in state trial and appellate courts.~~

.2503 Recognition as a Specialist in Criminal Law

A lawyer may qualify as a specialist by meeting the standards set for criminal law or the subspecialty of criminal appellate practice or subspecialty of state criminal law. If a lawyer qualifies as a specialist by meeting the standards set for the criminal law specialty, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Law." If a lawyer qualifies as a specialist by meeting the standards set for the subspecialty of criminal appellate practice, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Appellate Practice." If a lawyer qualifies as a specialist by meeting the standards set for the subspecialty of state criminal law, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in State Criminal Law." If a lawyer qualifies as a specialist by meeting the standards set for both criminal law and the subspecialty of criminal appellate practice, the lawyer shall be entitled to represent that he or she is a "Board Certified Specialist in Criminal Law and Criminal Appellate Practice."

.2505 Standards for Certification as a Specialist

Each applicant for certification as a specialist in criminal law, or the subspecialty of state criminal law, or the subspecialty of criminal appellate practice shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification:

(a) Licensure and Practice....

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of criminal law.

(1)

(4) For the subspecialty of criminal appellate practice, the applicant must have been engaged in the active practice of criminal appellate law for at least five years prior to certification during which the applicant devoted an average of at least 500 hours a year to the practice of criminal law (in both trial and appellate courts), but not less than 400 hours in any one year. The board may require an applicant to show substantial involvement in criminal appellate law by providing information regarding the applicant's participation, during the five years prior to application, in activ-

ities such as brief writing, motion practice, oral arguments, and the preparation and argument of extraordinary writs.

(c) Continuing Legal Education

(1) In the specialty of criminal law, and the state criminal law subspecialty, and the criminal appellate practice subspecialty, an applicant must have earned no less than 40 hours of accredited continuing legal education credits in criminal law during the three years preceding the application, which 40 hours must include the following:

(A) at least 34 hours in skills pertaining to criminal law, such as evidence, substantive criminal law, criminal procedure, criminal trial advocacy, and criminal trial tactics, and appellate advocacy;

(B)

(2) In order to be certified as a specialist in both criminal law and the subspecialty of criminal appellate law, an applicant must have earned no less than 46 hours of accredited continuing legal education credits in criminal law during the three years preceding application, which 46 hours must include the following:

(A) at least 40 hours in skills pertaining to criminal law, such as evidence, substantive criminal law, criminal procedure, criminal trial advocacy, and criminal trial tactics, and appellate advocacy;

(B)

(d) Peer Review

(1) Each applicant for certification as a specialist in criminal law, and the subspecialty of state criminal law, and the subspecialty of criminal appellate practice, must make a satisfactory showing of qualification through peer review.

(2)

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability.

(1) Terms

(2) Subject Matter

The examination shall cover the applicant's knowledge in the following topics in criminal law, in the subspecialty of state criminal law, and/or in the subspecialty of criminal appellate practice, as the applicant has elected:

(A) the North Carolina and Federal Rules of Evidence;

(B) ...

(C) the North Carolina Rules of Appellate Procedure.

(3) Required Examination Components.

(A) Criminal Law Specialty

(B) State Criminal Law Subspecialty

(C) Criminal Appellate Practice Subspecialty

An applicant for certification in the subspecialty of criminal appellate practice must pass the criminal appellate practice examination in addition to passing part I of the criminal law examination (on general topics in criminal law) and passing part II (on federal and state criminal law) or part III (on state criminal law) of the examination. If an applicant for certification in criminal appellate practice is already certified as a specialist in the specialty of criminal law or the subspecialty of state criminal law, the applicant is only required to take and pass the criminal appellate practice examination.

.2507 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in criminal law, and the subspecialty of state criminal law and the subspecialty of criminal appellate practice are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

Section .3000 Certification Standards for the Appellate Practice Specialty

Note: All rules in Section .3000 are new. Therefore, bold, understrikes, and overstrikes are not used to show changes in the text.

.3001 Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates appellate practice as a field of law for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

.3002 Definition of Specialty

The specialty of appellate practice is the practice of law relating to appeals to the Appellate Division of the North Carolina General Courts of Justice, as well as appeals to appellate-level courts of any state or territory of the United States, the Supreme Court of the United States, the United States Courts of Appeals, the United States Court of Appeals

for the Armed Forces and the United States Courts of Criminal Appeals for the armed forces, and any tribal appellate court for a federally recognized Indian tribe (hereafter referred to as a “state or federal appellate court” or collectively as “state and federal appellate courts”).

.3003 Recognition as a Specialist in Appellate Practice

If a lawyer qualifies as a specialist in appellate practice by meeting the standards for the specialty, the lawyer shall be entitled to represent that he or she is a “Board Certified Specialist in Appellate Practice.” Any lawyer who is entitled to represent that he or she is a “Board Certified Specialist in Criminal Appellate Practice” (having been certified as such under the standards set forth in Section .2500 of this subchapter) at the time of the adoption of these standards shall also be entitled to represent that he or she is a “Board Certified Specialist in Appellate Practice” and shall thereafter meet the standards for continued certification under Rule .3006 of this section in lieu of the standards for continued certification under Rule .2506 of Section .2500 of this subchapter.

.3004 Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in appellate practice shall be governed by the provisions of the North Carolina Plan of Legal Specialization (*see* Section .1700 of this subchapter) as supplemented by these standards for certification.

.3005 Standards for Certification as a Specialist in Appellate Practice

Each applicant for certification as a specialist in appellate practice shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in appellate practice:

(a) **Licensure and Practice** - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in appellate practice.

(1) **Substantial involvement** shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 400 hours a year, and not less than 100 hours in any one year, to appellate practice. “Practice” shall mean substantive legal work done primarily for the purpose of providing legal advice or representation including activities described in paragraph (2) below, or a practice equivalent as described in paragraph (3) below.

(2) **Substantive legal work** in appellate practice includes, but is not limited to, the following: preparation of a record on appeal or joint appendix for filing in any state or federal appellate court; researching, drafting, or editing of a legal brief, motion, petition, or response for filing in any state or federal appellate court; participation in or preparation for oral argument before any state or federal appellate court; appellate mediation, either as the representative of a party or as a mediator, in any state or federal appellate court; consultation on issues of appellate practice including consultation with trial counsel for the purpose of preserving a record for appeal; service on a committee or commission whose principal focus is the study or revision of the rules of appellate procedure of the North Carolina or federal courts; authoring a treatise, text, law review article, or other scholarly work relating to appellate practice; teaching appellate advocacy at an ABA accredited law school; and coaching in appellate moot court programs.

(3) “Practice equivalent” shall include the following activities:

(A) Service as a trial judge for any North Carolina General Court of Justice, United States Bankruptcy Court, or United States District Court, including service as a magistrate judge, for one year or more may be substituted for one year of experience toward the five-year requirement set forth in Rule .3005(b)(1).

(B) Service as a full-time, compensated law clerk for any North Carolina or federal appellate court for one year or more may be substituted for one year of experience toward the five-year requirement set forth in Rule .3005(b)(1).

(C) Service as an appellate judge for any North Carolina or federal appellate court may be substituted for the equivalent

years of experience toward the five-year requirement set forth in Rule .3005(b)(1) as long as the applicant’s experience, before the applicant took the bench, included substantial involvement in appellate practice (as defined in paragraph (b)(1)) for two years before the applicant’s service as an appellate judge.

(4) An applicant must also demonstrate substantial involvement in appellate practice by providing information regarding the applicant’s participation during his or her legal career in the following:

(A) Five (5) oral arguments to any state or federal appellate court; and

(B) Principal authorship of ten (10) briefs submitted to any state or federal appellate court.

(c) **Continuing Legal Education** - An applicant must earn no fewer than 36 hours of accredited continuing legal education (CLE) credits in appellate practice and related fields during the three years preceding application, with no less than six credits to be earned in any one year. Of the 36 hours of CLE, at least 18 hours shall be in appellate practice, and the balance may be in the following related fields: trial advocacy; civil trial practice and procedure; criminal trial practice and procedure; evidence; legal writing; legal research; and mediation. An applicant may ask the specialty committee to recognize an additional field as related to appellate practice for the purpose of meeting the CLE standard. An applicant who uses authorship of a treatise, text, law review article, or other scholarly work relating to appellate practice or the teaching of appellate advocacy at an ABA-accredited law school to satisfy the substantial involvement requirement in paragraph (b) of this rule may not use the same experience to satisfy the CLE requirements of this paragraph (c).

(d) **Peer Review** - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law and must have significant legal or judicial experience in appellate practice. An applicant consents to confidential inquiry by the board or the specialty commit-

tee to the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant's place of employment at the time of the application.

(2) The references shall be given on standardized forms mailed by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.

(e) Examination - An applicant must pass an examination designed to allow the applicant to demonstrate sufficient knowledge, skills, and proficiency in the field of appellate practice to justify the representation of special competence to the legal profession and the public. The examination shall be given annually and shall be administered and graded uniformly by the specialty committee. The exam shall include a written component which may be take-home and may include an oral argument before a moot court.

(1) Subject Matter - The examination shall cover the applicant's knowledge and application of the following:

- (A) The North Carolina Rules of Appellate Procedure;
- (B) North Carolina General Statutes relating to appeals;
- (C) The Federal Rules of Appellate Procedure;
- (D) Federal statutes relating to appeals;
- (E) The Local Rules and Internal Operating Procedures of the United States Court of Appeals for the Fourth Circuit;
- (F) The Rules of the United States Supreme Court;
- (G) Brief writing;
- (H) Oral argument; and
- (I) Principles of appellate jurisdiction.

.3006 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3006(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to

any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3005(b) of this subchapter.

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in appellate practice and related fields during the five years preceding application for continuing certification. No less than six of the credits may be earned in any one year. Of the 60 hours of CLE, at least 20 hours shall be in appellate practice, and the balance may be in the related fields set forth in Rule .3005(c).

(c) Peer Review - The specialist must comply with the requirements of Rule .3005(d) of this subchapter.

(d) Time for Application - Application for continued certification shall be made not more than 180 days, nor less than 90 days, prior to the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3005 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, the application shall be treated as if it were for initial certification under Rule .3005 of this subchapter.

.3007 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in appellate practice are subject to any general requirement, standard, or procedure, adopted by the board, that applies to all applicants for certification or continued certification.

.3008 Advisory Members of the Appellate Practice Specialty Committee

The board may appoint former chief justices of the North Carolina Supreme Court to serve as advisory members of the Appellate Practice Specialty Committee. Notwithstanding any other provision in The Plan of Legal Specialization (Section .1700 of this subchap-

ter) or this Section .3000, the board may waive the requirements of Rule .3005(d) and (e) above if an advisory committee member has served at least one year on the North Carolina Supreme Court and may permit the advisory member to file an application to become a board certified specialist in appellate practice upon compliance with all other required standards for certification in the specialty. Advisory members shall hold office for an initial term of three years and shall thereafter serve at the discretion of the board.

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct

The proposed amendment to the Preamble of the Rules of Professional Conduct that was published in the last edition of the *Journal* was revised by the Ethics Committee at its meeting on July 22, 2010, and approved for publication by the council at its meeting on July 23, 2010. The proposed amendment adds a statement to the Preamble urging lawyers not to discriminate in their practices on the basis of race, gender, national origin, religion, age, disability, sexual orientation, or gender identity. The second sentence in the proposed amendment was modified by the Ethics Committee to substitute the words "does not limit" for "prohibit," thereby reinforcing the aspirational character of the Preamble.

The Preamble is the introduction to the Rules and is never the basis for professional discipline. To clarify this point, amendments to the Scope section of the Rules of Professional Conduct are also proposed.

0.1 Preamble: A Lawyer's Responsibilities [1] ...

[6] While employed or engaged in a professional capacity, a lawyer should not discriminate on the basis of a person's race, gender, national origin, religion, age, disability, sexual orientation, or gender identity. This responsibility of non-discrimination does not limit a lawyer's right to advocate on any issue.

[7] ~~{6}~~ ...

[re-numbering remaining paragraphs]

0.2 Scope

[1] ...

[8] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble reflects the aspirational goals of the legal profession and,

together with this note on Scope, provide provides general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative. Research

notes were prepared to compare counterparts in the original Rules of Professional Conduct (adopted 1985, as amended) and to provide selected references to other authorities. The

notes have not been adopted, do not constitute part of the Rules, and are not intended to affect the application or interpretation of the Rules and Comments. ■

Proposed Ethics Opinions (Cont.)

client consents to the charge prior to the visit.

Inquiry #1:

A personal injury law firm (Firm) advertises that it will provide home/hospital visits to potential clients. Firm also advertises that it works on a contingency fee basis and that consultations are free. The fee agreement recites a contingency fee, and further states that costs will be billed separately and in addition to the contingency fee.

May Firm charge a client for the actual cost of the out-of-office consultation (mileage) in addition to the contingency fee?

Opinion #1:

Yes. A lawyer may enter into a fee agreement with a client that requires the client to pay court costs and expenses of litigation in addition to a contingent fee on any amount recovered for the client. *See* Rule 1.5(c); RPC 235; 2004 FEO 8. However, the fee and expenses that are ultimately charged and collected from the client must not be clearly excessive in violation of Rule 1.5(a).

Inquiry #2:

May Firm charge a flat fee for the out-of-office consultation irrespective of the actual costs of meeting with the client? For example, may Firm charge a \$200 flat fee for any client that requests an out-of-office visit?

Opinion #2:

A distinction must be made between charges for expenses versus fees for legal services. Firm may not charge a set fee for an expense irrespective of the actual cost to Firm. Rule 1.5(a) provides that a lawyer shall not "charge or collect a clearly excessive amount for expenses." If a lawyer travels only a short distance to visit a prospective client, it would be clearly excessive for Firm to charge the client \$200 as a mileage expense.

However, lawyers may charge flat fees for providing legal services provided the require-

ments set out in 2008 FEO 10 are met. Lawyer at Firm may charge a flat fee for an initial consultation so long as the client understands and agrees that the flat fee is the entire payment for the specified legal work to be performed by the lawyer, regardless of the amount of time that it takes the lawyer to perform the legal work; the flat fee will be earned by the lawyer immediately upon payment; and when the lawyer's representation ends, the client will not be entitled to a refund of any portion of the flat fee unless the legal work is not completed or it can be demonstrated that the flat fee is clearly excessive under the circumstances. *Id.*

If Firm advertises that consultations are free, the \$200 charge necessarily must be a charge for expenses rather than legal fees. Firm may not charge \$200 for every out-of-office consultation, irrespective of the actual expense Firm incurred.

Inquiry #3:

If the answer to Inquiries #1 or #2 is "yes," must Firm disclose the charge for the out-of-office consultation prior to meeting with a client?

Opinion #3:

Yes. Firm must specifically disclose the charge for the out-of-office visit, and get the client's consent to the deduction of the expense from any recovery, prior to making such a visit.

In addition, Firm must clearly disclose any charges associated with out-of-office consultations in advertisements stating that Firm will provide out-of-office consultations and that consultations are free. Rule 7.1 provides that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. It is misleading for Firm to advertise that it will provide out-of-office consultations, and that consultations are free if Firm intends to charge clients for expenses related to the out-of-office visit. *See* 2004 FEO 8 (unless lawyer invariably makes the repayment of costs advanced contingent upon the outcome of each matter, advertisement for legal services that states that there is

no fee unless there is a recovery must also state that costs advanced must be repaid at the conclusion of the matter).

Inquiry #4:

If the answer to Inquiries #1 or #2 is "yes," must Firm disclose the charge for the offsite visit in its contingent fee agreement?

Opinion #4:

Yes. Rule 1.5(c) provides that a contingent fee agreement must be in writing and must state the method by which the fee is to be determined, including litigation and other expenses to be deducted from the recovery. Firm must disclose in the contingent fee agreement the charge for the offsite visit as an expense to be deducted from the recovery. ■

Too Many Friends (cont.)

real-time electronic communications, including communications through blogs, chat rooms, and other social media. Philadelphia Bar Ass'n Prof'l Guidance Comm., Op. 2010-6 (2010). The opinion states that Rule 7.3 does not bar the use of social media for solicitation where a prospective client to whom the lawyer's communication is directed has the ability to ignore the soliciting lawyer and respond or not as he or she sees fit.

In conclusion, don't turn off your brain when you sign onto your favorite social networking website. Keep the ethics rules in mind and remember that what happens in Vegas doesn't stay in Vegas if you post it on your website. ■

Suzanne Lever is assistant ethics counsel for the North Carolina State Bar.

Endnotes

1. Some social websites have a "chat" feature which allows users to instantly communicate with friends who are also online.
2. "Blogging" is the process of communicating with other people through the use of an online diary or "web log."

Grievance Committee and DHC Actions

Disbarments

Paul Huffman of Boone surrendered his law license and was disbarred by the Wake County Superior Court. Huffman misappropriated entrusted funds totaling approximately \$5,100.

Thomas Nesbit of Mocksville sold half of his office building. He convinced the buyers and the closing lawyer that he was attending a closing that same day to refinance the remaining property, which would eliminate the existing deed of trust on the property being purchased. No such refinance closing was scheduled to take place. The inexperienced closing lawyer followed Nesbit's instructions to deliver the gross sales proceeds to Nesbit. Nesbit knew that he was obligated to apply \$116,000 to pay off the existing mortgage. Instead, Nesbit converted the funds to his own use. He was convicted of felony obtaining property by false pretenses. Nesbit was disbarred.

Richard S. Poe of Charlotte surrendered his law license and was disbarred by the Wake County Superior Court. Poe misappropriated \$3,787.50 in fees from his law firm employer.

The DHC found that **Betsy Wolfenden** of Chapel Hill engaged in a variety of misconduct characterized by misrepresentations to the court, frivolous claims, disruptive behavior, and hostility to judges and other members of the bar. The DHC disbarred Wolfenden.

Suspensions & Stayed Suspensions

The DHC found that Assistant District Attorney **Samantha Alsup** of Lake Waccamaw failed to disclose discoverable evidence in an arson case, resulting in a mistrial. The DHC imposed a one-year stayed suspension.

William Brown of Fayetteville attempted to have sex with clients and made inappropriate sexual comments to clients. The DHC suspended him for three years. The suspension is stayed for three years upon compliance with numerous conditions, including that Brown cannot represent female clients and cannot be alone with females in connection with his law practice unless his practice monitor is present.

The DHC suspended Greensboro lawyer **David Folmar** for five years. Folmar served as an assistant United States attorney for several years while he was administratively suspended. He was administratively suspended because he completed his annual mandatory CLE requirements but did not submit his annual CLE report. Folmar also falsely certified to the USDOJ that he was an active member of a state bar. After serving 18 months active, Folmar may apply for a stay of the balance upon numerous conditions.

Nick Mackey of Charlotte made false representations and omissions on his application to the Bar, neglected and failed to communicate with a client, and failed to file state and federal income tax returns. Mackey was suspended for three years. After serving one year active, Mackey may apply for a stay of the balance.

Charlotte lawyer **Sharyl Mason-Watson** failed timely to disburse funds held in her trust account, failed to communicate with clients, failed to respond to the Bar, and failed to maintain required trust account records. The DHC suspended Mason-Watson for two years. The suspension is stayed for three years on numerous conditions.

Ronald "Bit" Pressley of Raleigh engaged in the unauthorized practice of law during an administrative suspension, did not communicate with clients, did not act diligently, did not promptly deliver entrusted funds, and did not timely respond to the Bar. Pressley was suspended for three years. The suspension is stayed for three years upon numerous conditions.

Diedre Whitted of Goldsboro allowed her father, a disbarred (and now deceased) lawyer, to engage in the unauthorized practice of law on one occasion, negligently failed to supervise his activities, and failed to act with reasonable diligence and competence. The DHC imposed a three-year stayed suspension.

Interim Suspension

The DHC imposed an interim suspension of Raleigh lawyer **Charles Ruffin Poole**. Poole pled guilty to the felony offense of fed-

eral income tax evasion in violation of 26 U.S.C. § 7201.

Censures

Philip Adkins of Snow Camp was censured by the Grievance Committee. He failed to represent a client diligently, did not communicate with a client, did not appear for a scheduled hearing, and did not respond timely to the State Bar.

The Grievance Committee censured **Clifton J. Gray III** of Washington. Gray did not participate in good faith in mandatory fee dispute resolution, made untruthful statements to the Grievance Committee, and did not respond to the State Bar's requests for information.

The DHC censured Lillington lawyer **Mark Key**. Key violated an order of the Wake County Superior Court suspending him from appearing in Wake County courts for one year.

The Forsyth County Superior Court censured Winston-Salem lawyer **Raymond Marshall**. Marshall engaged in conduct degrading to a tribunal and habitually violated established rules of procedure.

Creighton "Zeke" Sossomon of Highlands was censured by the Grievance Committee. Sossomon continued to practice law while he was administratively suspended. He also provided financial assistance to a client in connection with litigation, failed to act with reasonable diligence, and failed to communicate with a client.

Anthony Taibi of Durham was censured by the Grievance Committee. Taibi falsely represented to an Industrial Commission deputy commissioner that he did not know his client's whereabouts.

Reprimands

Assata Buffaloe, Bertie County assistant district attorney, was reprimanded by the Grievance Committee. Buffaloe did not make a reasonably diligent inquiry to determine

CONTINUED ON PAGE 56

Law School Briefs

All of the law schools located in North Carolina are invited to provide material for this column. Below are the submissions we received this quarter.

Campbell University School of Law

The Norman Adrian Wiggins School of Law at Campbell University opened its doors in downtown Raleigh with great fanfare in September 2009. The law school closed its first year in the state capital on May 21 with its 2010 graduation ceremony at Meymandi Concert Hall, Progress Energy Performing Arts Center. Erwin Chemerinsky, dean and professor of law at the University of California, Irvine School of Law, delivered the commencement address. Highlights from Campbell Law's first year in Raleigh include:

- Michael Dreeben, deputy solicitor general of the United States, helped kick off the opening of Campbell Law in Raleigh with a speech to members of the NC Attorney General's office and law students in September 2009.

- A new Senior Law Clinic, providing free representation to low-income senior citizens in Wake County, was launched in September.

- The North Carolina Supreme Court Historical Society hosted its 2009 Annual Meeting and Gala in the law school's grand foyer in November.

- A new dual degree partnership with NC State University offering students a law degree from Campbell and a Masters of Public Administration from NCSU was announced in March 2010.

- A formal dedication of the Campbell Law School building was held on May 19. Participating dignitaries included NC Supreme Court Chief Justice Sarah Parker, Raleigh Mayor Charles Meeker, NC Attorney General Roy Cooper, and First Citizens Bank Chairman and CEO Frank Holding Jr., among others.

- Applications for admission to Campbell Law have jumped by nearly 40% since it was announced that the school was moving to Raleigh. Entering credentials of students have

also increased significantly.

- Four new tenure-track faculty members have been hired, increasing the full-time faculty to 25. New faculty members come with strong backgrounds in legal teaching and practice, as well as law degrees from Duke, UNC, and Harvard.

Duke Law School

Duke Law welcomes visiting scholars—Evelyn Brooks Higginbotham, chair of African and African American Studies at Harvard University, will serve as the inaugural holder of Duke's John Hope Franklin Chair in American Legal History, on a visiting basis. Major General Charles J. Dunlap Jr., former deputy judge advocate general of the United States Air Force, joins Duke as a visiting professor of the practice of law and as associate director of Duke's Center on Law, Ethics, and National Security. Other 2010 visiting faculty will include US Supreme Court Justice Samuel Alito, US Deputy Solicitor General Michael R. Dreeben, former NC Court of Appeals Judge Charles L. Becton, Arizona State University Professor Myles V. Lynk, and UNC Professor John M. Conley.

Professor confirmed assistant attorney general—Professor Christopher Schroeder was confirmed by the US Senate as assistant attorney general for the Office of Legal Policy in the US Department of Justice. Schroeder serves as primary policy adviser to the attorney general and deputy attorney general and develops and implements significant policy initiatives of the Department of Justice.

Clinics win several cases in court—Students and faculty in Duke's Environmental Law and Policy Clinic facilitated a settlement to protect endangered sea turtles in a federal lawsuit against the North Carolina Marine Fisheries Commission and the Division of Marine Fisheries on behalf of its client, the Karen Beasley Sea Turtle Rescue and Rehabilitation Center.

Two clients of the Wrongful Convictions Clinic, co-directed by Professors James Coleman and Theresa Newman, have had

their convictions vacated and been released from prison. Students and faculty worked for more than three years to build their case that Shawn Massey, incarcerated for 12 years, was the victim of erroneous eyewitness identification; the clinic worked for two years to show that Jonathan "Scott" Pierpoint, who served more than 17 years of a life sentence, was the victim of false testimony. Members of the NC bar assisted with the two cases, which were resolved with the cooperation of Mecklenburg County District Attorney Peter Gilchrist (Massey) and Madison County District Attorney Jerry Wilson (Pierpoint).

Elon University School of Law

David Gergen highlights Elon Law's emphasis on leadership and service through remarks at NCBA meeting—Delivering the keynote address at the 2010 North Carolina Bar Association annual meeting, former presidential adviser David Gergen, director of the Center for Public Leadership at the Harvard Kennedy School and chair of Elon's Law School Advisory Board, said of Elon Law, "We have an active mentorship program with many lawyers from the Greensboro bar and lawyers from around the state coming in and working with the students. It's part of what we are trying to create and that is a law school with a difference, with an emphasis upon community service, upon leadership, and we're very proud of the early results."

Gergen also highlighted the law school's recently announced Billings, Exum, & Frye National Moot Court Competition, the employment rate for the Class of 2009 of 91% and its overall bar passage rate of 93%.

At the meeting, Elon Law Dean George R. Johnson Jr. was elected as a vice-president of the NCBA.

Senator Hagan urges Class of 2010 to shape the law in service to society—Delivering Elon Law's 2010 commencement address, US Senator Kay Hagan said, "Never assume the law will take care of itself, that it doesn't constantly need fearless and dedicated advocates working to ensure its proper

implementation. I encourage every one of you to look around and evaluate how you can make our society better, where you can right an injustice or perhaps build better opportunities for your neighbors and communities. You've gotten a head start here at Elon, where the curriculum encourages civic engagement and community leadership."

Elon Law's leadership program featured in new video series—A five-part video series about Elon Law's comprehensive leadership program for law students can be viewed at law.elon.edu/leadership.

North Carolina Central University School of Law

2010 graduating class—NCCU School of Law graduated 171 students in May 2010. From this year's graduating class, 124 graduates are scheduled to take the July 2010 North Carolina bar exam.

Foreign studies program established—NCCU School of Law has established a successful collaboration with the University of Costa Rica Law School and held its first ABA accredited summer study abroad program from May 17 – June 18, 2010, in San Jose, Costa Rica. Ten NCCU School of Law students and three faculty members participated in the program this year. The program included courses in Comparative Biotechnology, Bioethics, and Policy; Comparative Limited Liability Companies; and Mediation Advocacy. Students visited the Constitutional Court and also met with Costa Rican judges and lawyers. The program also included faculty from the University of Costa Rica Law School.

Environmental law partnership—NCCU School of Law has initiated the development of an environmental law program through a partnership with the US Environmental Protection Agency (EPA) and the Vermont School of Law (VSL). The Vermont School of Law (VSL) has the nation's number-one ranked environmental law program. The EPA provided funding for five NCCU School of Law students and one professor to spend five weeks on the campus of the VSL during the months of June – July 2010. The students were enrolled in environmental law courses as part of VSL's summer session of legal instruction. Kevin Foy, professor of environmental law at NCCU School of Law, was part of the summer session at VSL and is directing the development of the program.

Retirements—Professors M. Thomas Ringer and Walter Nunnallee, and Executive Assistant Iris Gilchrist.

University of North Carolina School of Law

Six new faculty members join UNC—The school welcomes John Coyle, Kareem Crayton, Catherine Kim, Jon McLanahan (who has been serving as interim director of the school's Bar Success Program), Gregg Polsky, and Craig Smith.

New associate deans and clinic director appointed—As of July 1, new leadership appointments in the school include Robert P. Mosteller, associate dean for academic affairs; Richard Myers, associate dean for student services; Thomas A. Kelley, director of the clinical program. Mosteller and Myers succeed Laura N. "Lolly" Gasaway, former associate dean for academic affairs and student services; Kelley succeeds Deborah Weissman.

School pro bono program earns NCBA honor—In addition to numerous awards bestowed upon Carolina Law alumni at the annual NCBA conference in June, the school Pro Bono Program earned the Law Student Group Pro Bono Award for a project that takes students to low-income, rural communities in North Carolina during fall and spring breaks to work with professional lawyers to prepare wills and other advanced directives for low-income clients. The students partnered with the UNC Center for Civil Rights and Legal Aid of North Carolina. This year, more than 100 documents were prepared.

Faculty member joins the Uniform Law Commission—Governor Beverly Perdue tapped Professor Caroline Brown for the Uniform Law Commission. She teaches remedies, contracts, and commercial law, and she chaired the Drafting Committees of the NC General Statutes Commission to revise UCC Article 5 and Article 9.

Commencement—Bryan A. Stevenson, executive director of the Equal Justice Initiative, delivered the commencement speech at the ceremony held on May 9 in the Dean E. Smith Center. Approximately 240 students crossed the stage.

Director Diversity Initiative issues report—The Director Diversity Initiative issued its report on corporate diversity. While the report indicates an increase in diversity on corporate boards in North

Carolina, the state's corporations still lag the diversity of Fortune 100 corporate boards. Read the report at <https://ddi.law.unc.edu>.

Wake Forest University School of Law

Wake Forest University School of Law and the new Center for Bioethics, Health, and Society hosted a conference on "Patient-Centered Health Law and Ethics" on Thursday, April 15, in the Worrell Professional Center. The conference, featuring Mark A. Hall, Wake Forest University law professor and director of the Center for Bioethics, Health, and Society, and Lois Shepherd, a director for the University of Virginia's Center for Biomedical Ethics and Humanities, involved participants from law and other academic fields including sociology, medicine, philosophy, and religion. Scholars from these fields shared their perspectives on whether law and ethics should focus more on patients' concerns than on the concerns of healthcare providers, insurers, or the government. The *Wake Forest Law Review* will report about the scholarly discussion, together with short essays submitted by the speakers. This inaugural conference of the Center for Bioethics, Health, and Society is made possible by a generous gift from David Zacks ('64, JD '67), a partner at Kilpatrick Stockton in Atlanta, who is the co-founder of the American Cancer Society Patient Navigator Program and past national chair of the board, as well as the co-chair-elect of the Wake Forest University School of Law, Law Board of Visitors, among others.

The Wake Forest University School of Law has approved a new student-edited publication: the *Wake Forest Journal of Law and Policy*. The *Journal of Law and Policy* will issue its first publication in the 2010-11 academic school year. "The *Journal* is an interdisciplinary publication that explores the intersection of legal issues with public and social policy," said Melanie Johnson Raubach ('10). "Consistent with Wake Forest's motto of 'Pro Humanitate,' the *Journal's* mission is to introduce, maintain, and advance discourse so as to uncover policies that will engender equality and the true administration of justice." The *Journal* will publish primarily legal analyses, but will also include other scholarly works and social commentary.

Wake Forest University School of Law's Innocence and Justice Clinic is celebrating

the recent release of Machello Biting after he served nine years in prison. It is the first time the students' work in the clinic has resulted in a reduced sentence. The January victory came on the eve of the clinic's one-year anniversary. "If it wasn't for the research of our clinic students, Mr. Biting would still be serving a sentence that was longer than it should have been," said clinic co-director Carol Turowski. "It's even more fitting that his release came the same month as the clinic's first-year anniversary." Wake Forest third-year law students Emile Thompson and Caitlin Torney discovered the sentencing miscalculation as part of their clinical course, which was a follow-up to the Forsyth County DNA Project. They then turned to Forsyth County District Attorney Jim O'Neill, who expedited the case. "The students' diligent efforts at investigating the case led to today's results," Turowski said. ■

In Memoriam

Ike Andrews
Pittsboro

James E. Cline
Raleigh

William Coxe Jr.
Asheville

Henry C. Doby Jr.
Albemarle

Patrick V. Ford
Charlotte

George W. Jackson
Roxboro

Thomas S. Johnston
Jefferson

Janie L. Long
Winston-Salem

Nick J. Miller
Charlotte

Carl S. Milsted
Swansboro

Susan A. Osment
Chapel Hill

Debra L. Pittman
Lexington

Cindy G. Strope
Jacksonville

Carol Teeter
Winston-Salem

Marvin R. Waters
Durham

Client Security Fund Reimburses Victims

At its July 22, 2010, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved a payment of \$829 to one client who suffered a financial loss due to the misconduct of a North Carolina lawyer.

The new payment authorized was:

1. An award of \$829 to a former client of Roddey Brown of Wilmington. The board found that Brown handled a personal injury settlement for a client and retained \$829 to pay one of the client's medical providers. Before all the disbursements from the settlement could be made, Brown's trust account

was frozen by the State Bar due to his misappropriation. Brown's trust account balance was insufficient to pay all his clients' obligations due to his misappropriation. The client paid the medical provider himself. Brown was disbarred on October 23, 2009. ■

Disciplinary Department (cont.)

whether a file contained discoverable material. As a result, she made a plea offer to a defendant without disclosing exculpatory evidence.

Johnny Gaskins of Raleigh was reprimanded by the Grievance Committee. After his criminal client terminated the attorney-client relationship, Gaskins spoke to the media about the former client's case. Gaskins knew or reasonably should have known that these statements would be disseminated by means of public communication and would have a substantial likelihood of materially prejudicing the former client's case.

The Grievance Committee reprimand-

ed **W. Rickert Hinnant** of Winston-Salem. Hinnant did not keep his clients reasonably informed and did not respond promptly to their requests for information.

Matthew Nestor of Oak Island was reprimanded by the Grievance Committee. Nestor implied to unrepresented persons that he was disinterested, did not explain who he represented, and made a misleading statement. He also committed technical trust accounting violations.

The Grievance Committee reprimanded **Shannon Reid** of Durham for failing to respond to the State Bar.

Petitions for Reinstatement

The DHC denied the petition of former Charlotte lawyer **David Harless** for reinstatement from disability inactive status.

Notice of Intent to Seek Reinstatement

Individuals who wish to note their concurrence with or opposition to these petitions should file written notice with the secretary of the State Bar before November 1, 2010 (60 days from publication).

In the Matter of Michael L. Yopp

Notice is hereby given that **Michael L. Yopp** of Dunn, North Carolina, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Yopp surrendered his law license and was disbarred July 19, 2002, for misappropriating client funds for his personal benefit, over-disbursing client funds, and failing to reconcile his trust account. ■

Kapp Nominated as Vice-President



Raleigh attorney M. Keith Kapp was selected by the State Bar's Nominating Committee to stand for election to the office of vice-president of the North Carolina

State Bar. The election will take place in October at the State Bar's annual meeting.

Kapp earned an AB degree, with honors, from the University of North Carolina and a JD, also with honors, from the University of

North Carolina School of Law.

Kapp is a partner, vice-president, and board member at his firm, Williams Mullen. He represents businesses, ranging from multinational to private or family-owned enterprises, in connection with their commercial litigation and regulatory needs. He advises clients on the laws of contract, shareholder rights, antitrust, franchise relations, warranty, consumer protection, unfair trade practices, and various regulatory statutes. As a member of the Commercial Arbitration Panel of the American Arbitration Association, Kapp also provides arbitration services.

Kapp has substantial involvement in local and state bar organizations. He served as president of the Wake County Bar Association and

served on the Board of Governors of the North Carolina Bar Association. As a State Bar counselor, Kapp chaired the Ethics Committee, Facilities Committee, and Administrative Committee. He has also served on the Grievance Committee, Emerging Issues Committee, Issues Committee, Paperless Banking Committee, Executive Committee, Disciplinary Review Committee, and Program Evaluation Committee.

Mr. Kapp is active in numerous civic organizations including the Moravian Ministries Foundation, the Raleigh Kiwanis Club, and the Raleigh Little Theatre.

Kapp is proud to be married to Chancy McLean Kapp, and have Katie Kapp as a daughter and rising college senior. ■

President's Message (cont.)

for his work as LAP Director.

Much to our deep regret, Don has recently announced his retirement to take place at the end of 2011. Don is, of course, irreplaceable, and the task of finding a new director to fill his shoes will be a major challenge.

Ed Ward – LAP Assistant Director

Eastern North Carolina District
1-877-627-3743, eward@ncbar.gov

In 1999, Ed joined the North Carolina State Bar as director of FRIENDS, which was a new State Bar program to assist lawyers suffering from mental illnesses. He now serves as assistant director of the Lawyer Assistance Program, which is inclusive of both FRIENDS and PALS.

Ed is a graduate of Campbell University, and is credentialed as a licensed clinical addiction specialist and a certified clinical



supervisor by the North Carolina Substance Abuse Professionals Certification Board. In the course of his career, he has worked as an addictions counselor, clinical supervisor, and approximately 15 years as a hospital administrator. He is a past-president of the Addiction Professionals of North Carolina and a recipient of that organization's Norbert Kelly Outstanding Achievement Award. He has also received the Walter Mitchell Award given by the North Carolina Association of Alcoholic Residential Facilities.

Towanda Garner – LAP Coordinator

Piedmont North Carolina District
1-877-570-0991, tgarner@ncbar.gov

Towanda is the newest member of the LAP staff, which she joined in 2005. She earned a BA in Psychology with a minor in Child Development and Family Relations from East Carolina University. She also holds an MA degree in Clinical Psychology from North Carolina Central University. Her prior work experience includes serving as a clinical director and program director at a drug rehabilitation treatment center. Like Ed, she is a licensed clinical addiction specialist.

North Carolina currently has in excess of

23,500 licensed lawyers practicing in the state and that number is expected to double in the next 20 years. Record numbers of students are graduating from North Carolina law schools and over 1,000 students recently sat for the bar exam this past July. When these numbers are viewed in context with the present state of the economy, the difficult job market for lawyers, LAP's current case load of 636 active files, and the frightening statistics on attorney addiction and mental health (see article on page 12), it is obvious that a strong LAP program will continue to be more important than ever.

We are truly blessed to have extremely capable people at the LAP helm as well as hundreds of dedicated volunteers working behind the scenes to help others with illnesses similar to their own. Our heartfelt thanks to all of you for the important work you do for the lawyers of our state so that they might find, in themselves, their own invincible summers. ■



The North Carolina State Bar and Affiliated Entities

Selected Financial Data

The North Carolina State Bar

| | 2009 | 2008 |
|------------------------------------|------------------|------------------|
| Assets | | |
| Cash and cash equivalents | \$4,921,621 | \$3,843,692 |
| Property and equipment, net | 1,999,039 | 1,884,534 |
| Other assets | <u>192,567</u> | <u>211,595</u> |
| | \$7,113,227 | \$5,939,821 |
| Liabilities and Fund Equity | | |
| Current liabilities | \$3,445,824 | \$3,201,650 |
| Long-term debt | <u>289,596</u> | <u>384,634</u> |
| | 3,735,420 | 3,586,284 |
| Fund equity-retained earnings | <u>3,377,807</u> | <u>2,353,537</u> |
| | \$7,113,227 | \$5,939,821 |
| Revenues and Expenses | | |
| Dues | \$6,005,650 | \$5,827,813 |
| Other operating revenues | <u>647,476</u> | <u>646,596</u> |
| Total operating revenues | 6,653,126 | 6,474,409 |
| Operating expenses | (6,171,343) | (5,963,454) |
| Non-operating revenues | <u>542,487</u> | <u>101,411</u> |
| Net income | \$1,024,270 | \$612,366 |

The NC State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA)

| | 2009 | 2008 |
|---------------------------------------|------------------|------------------|
| Assets | | |
| Cash and cash equivalents | \$4,578,898 | \$6,498,043 |
| Interest receivable | 180,137 | 370,896 |
| Other assets | <u>361,368</u> | <u>381,632</u> |
| | \$5,120,403 | \$7,250,571 |
| Liabilities and Fund Equity | | |
| Grants approved but unpaid | \$3,079,446 | \$4,101,731 |
| Other liabilities | <u>354,327</u> | <u>396,020</u> |
| | 3,433,773 | 4,497,751 |
| Fund equity-retained earnings | <u>1,686,630</u> | <u>2,752,820</u> |
| | \$5,120,403 | \$7,250,571 |
| Revenues and Expenses | | |
| Interest from IOLTA participants, net | \$2,262,514 | \$5,087,506 |
| Other operating revenues | - | <u>417</u> |
| Total operating revenues | \$2,262,514 | 5,087,923 |

| | | |
|------------------------|----------------|----------------|
| Operating expenses | (3,443,125) | (4,578,730) |
| Non-operating revenues | <u>114,421</u> | <u>241,193</u> |
| Net (loss) income | \$(1,066,190) | \$750,386 |

Board of Client Security Fund

| | 2009 | 2008 |
|------------------------------------|------------------|------------------|
| Assets | | |
| Cash and cash equivalents | \$1,430,159 | \$1,433,507 |
| Other assets | <u>3,600</u> | <u>2,980</u> |
| | \$1,433,759 | \$1,436,487 |
| Liabilities and Fund Equity | | |
| Current liabilities | \$17,206 | \$21,237 |
| Fund equity-retained earnings | <u>1,416,553</u> | <u>1,415,250</u> |
| | \$1,433,759 | \$1,436,487 |

Revenues and Expenses

| | | |
|------------------------|---------------|---------------|
| Operating revenues | \$654,044 | \$592,804 |
| Operating expenses | (684,124) | (967,184) |
| Non-operating revenues | <u>31,383</u> | <u>65,786</u> |
| Net income (loss) | \$1,303 | \$(308,594) |

Board of Continuing Legal Education

| | 2009 | 2008 |
|------------------------------------|----------------|----------------|
| Assets | | |
| Cash and cash equivalents | \$324,371 | \$460,435 |
| Other assets | <u>194,576</u> | <u>132,904</u> |
| | \$518,947 | \$593,339 |
| Liabilities and Fund Equity | | |
| Current liabilities | 27,186 | 38,014 |
| Fund equity-retained earnings | <u>491,761</u> | <u>555,325</u> |
| | \$518,947 | \$593,339 |

Revenues and Expenses

| | | |
|------------------------|--------------|---------------|
| Operating revenues | \$597,547 | \$594,590 |
| Operating expenses | (668,991) | (618,996) |
| Non-operating revenues | <u>7,880</u> | <u>19,525</u> |
| Net loss | \$(63,564) | \$(4,881) |

Board of Legal Specialization

| | 2009 | 2008 |
|------------------------------------|--------------|--------------|
| Assets | | |
| Cash and cash equivalents | \$123,539 | \$99,872 |
| Other assets | <u>4,891</u> | <u>3,701</u> |
| | \$128,430 | \$103,573 |
| Liabilities and Fund Equity | | |
| Current liabilities | 1,180 | 1,494 |

| | | |
|-------------------------------|----------------|----------------|
| Fund equity-retained earnings | <u>127,250</u> | <u>102,079</u> |
| | \$128,430 | \$103,573 |

Revenues and Expenses

| | | |
|--|--------------|--------------|
| Operating revenues-specialization fees | \$110,444 | \$102,168 |
| Operating expenses | (87,561) | (90,221) |
| Non-operating revenues | <u>2,288</u> | <u>4,104</u> |
| Net income | \$25,171 | \$16,051 |

The Chief Justice's Commission on Professionalism

| | 2009 | 2008 |
|------------------------------------|----------------|----------------|
| Assets | | |
| Cash and cash equivalents | \$111,901 | \$117,767 |
| Other assets | <u>73,821</u> | <u>64,612</u> |
| | \$185,722 | \$182,379 |
| Liabilities and Fund Equity | | |
| Current liabilities | 861 | 1,617 |
| Fund equity-retained earnings | <u>184,861</u> | <u>180,762</u> |
| | \$185,722 | \$182,379 |

Revenues and Expenses


| | | |
|-------------------------|--------------|--------------|
| Operating revenues-fees | \$294,665 | \$285,830 |
| Operating expenses | (292,847) | (327,404) |
| Non-operating revenues | <u>2,281</u> | <u>5,463</u> |
| Net income (loss) | \$4,099 | \$(36,111) |

Board of Paralegal Certification

| | 2009 | 2008 |
|--|----------------|----------------|
| Assets | | |
| Cash and cash equivalents | \$205,591 | \$610,122 |
| Other assets | <u>14,838</u> | <u>11,875</u> |
| | \$220,429 | \$621,997 |
| Liabilities and Fund Equity | | |
| Current liabilities - accounts payable | 8,201 | 8,237 |
| Fund equity-retained earnings | <u>212,228</u> | <u>613,760</u> |
| | \$220,429 | \$621,997 |

Revenues and Expenses

| | | |
|-------------------------|------------------|---------------|
| Operating revenues-fees | \$252,970 | \$250,340 |
| Operating expenses | (166,916) | (173,850) |
| Non-operating revenues | <u>(487,586)</u> | <u>24,059</u> |
| Net (loss) income | \$(401,532) | \$100,549 |



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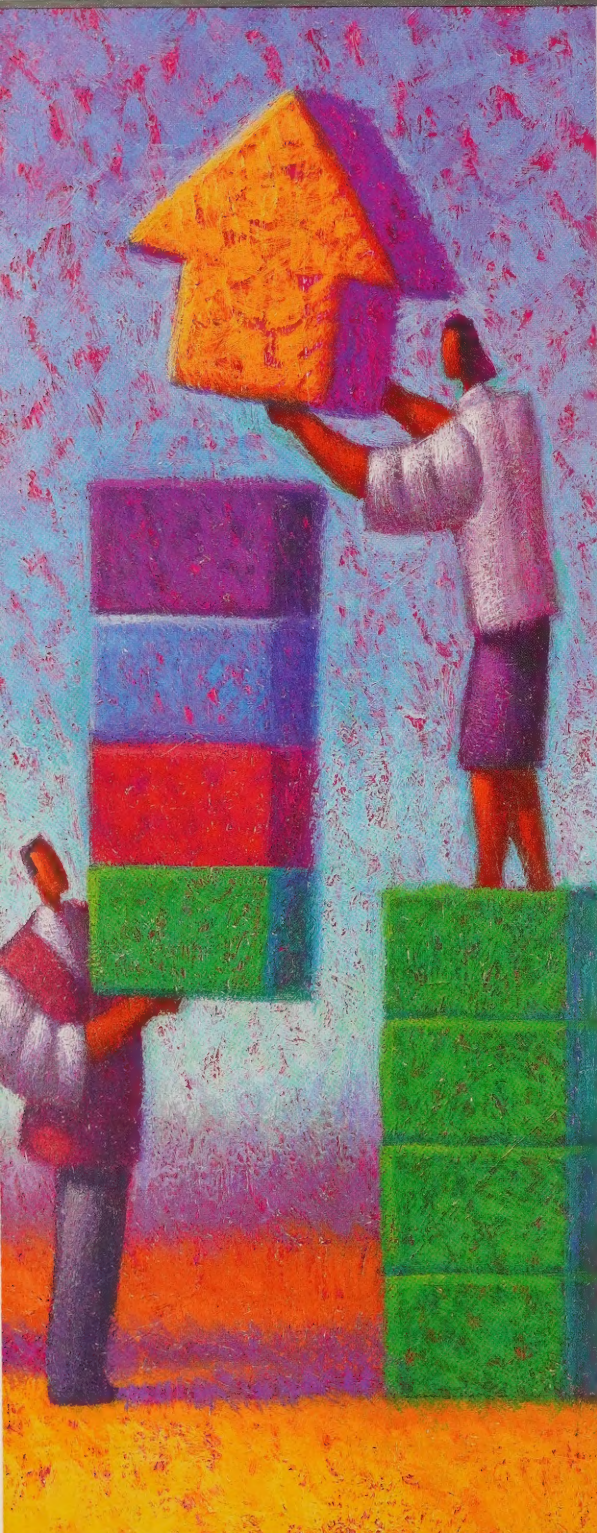
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North Carolina State Bar Board of Legal Specialization